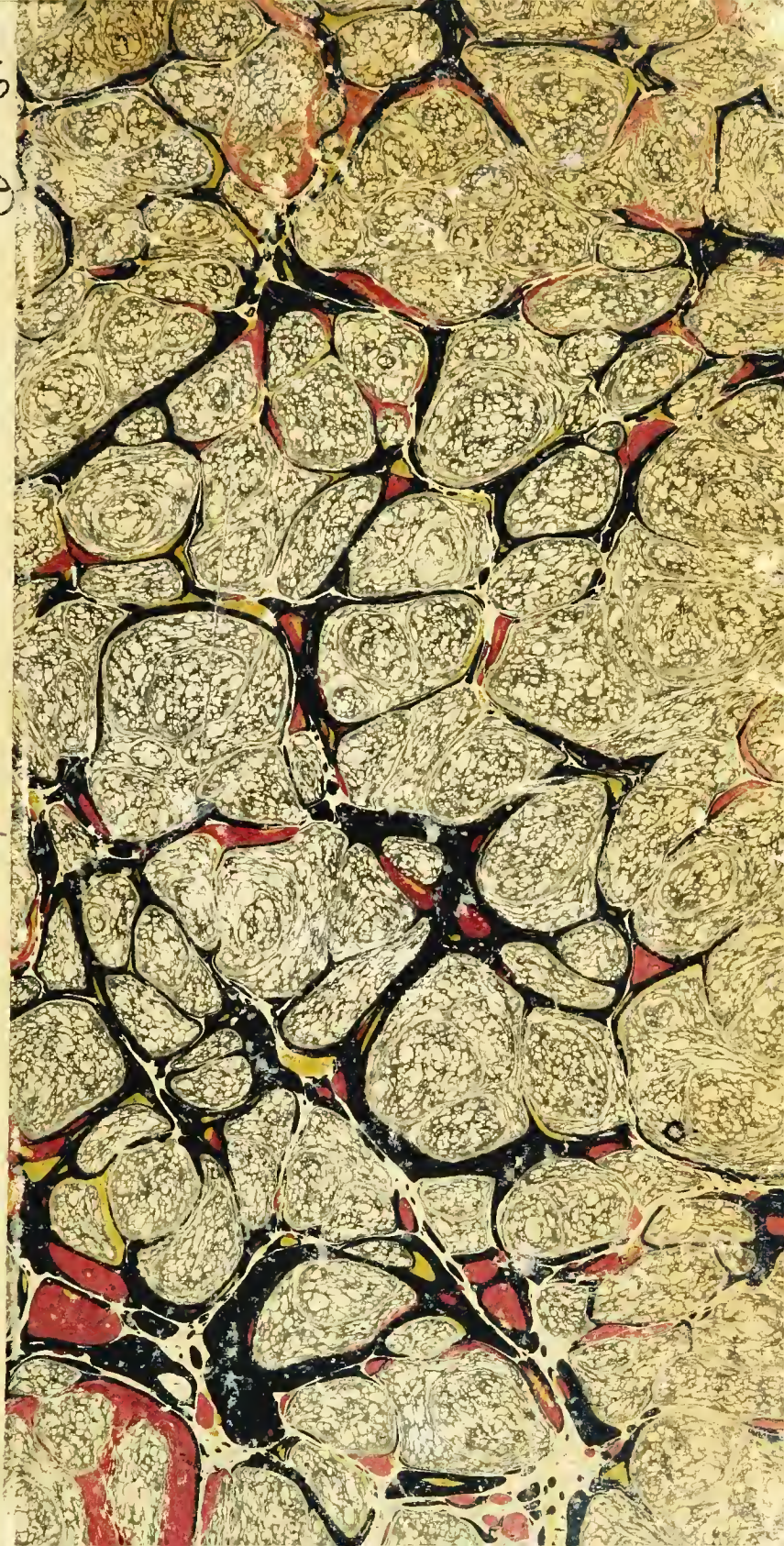


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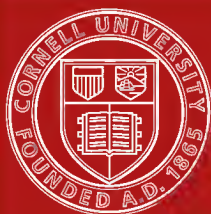
CRIME A PUNISHMENT
AND
PUNISHMENT A CRIME

LEADING THOUGHTS OF
TOLSTOI'S "RESURRECTION"



COUNT LEO TOLSTOI

BY
A. S. GOLDENWEISER
Member of the Bar in Kiev, Russia
WITH
LETTER FROM LEO TOLSTOI



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Tolstai's Letter

YASNAYA POLYANA, *February 14, 1909.*

EMANUEL ALEXANDROVICH.— I have just looked over once more your father's excellent critical essay, and, in spite of the fact that the exaggerated importance which he attaches to my writings makes it awkward for me to praise the article, I cannot but say that your father's essay brings out with great force and clearness my thoughts, dear to me, about the unreasonableness and immorality of that strange institution which is called a trial.

LEO TOLSTOI.

Translator's Preface

Tolstoi's novels are set in Russian surroundings — but his genius penetrates deeper than national and racial differences. His characters are human — and men and women all over the world recognize themselves in his heroes and heroines.

This is true of the "Resurrection" as well as of his earlier purely artistic productions. The "Resurrection" is a novel with a purpose. The purpose is to show the cruelty and unreasonableness of modern criminal trials and systems of retribution. The courts and prisons described in the novel are Russian courts and prisons — because the artist's realism demands a concrete setting for his picture. But the moralist's ideas are applicable to the system all over the world. Tolstoi would find little difference between criminal procedure in Russia and, let us say, in the United States. The main object of a trial, here as elsewhere, is to ascertain the guilt or innocence of the defendant, and the tortures of the "third degree" are as familiar in America as in Russia. Tolstoi's attack on the right of society to judge and punish the victims of its own maladjustments is not directed against any country in particular — it is an arraignment of humanity and of the most modern methods of penology.

"Crime is a punishment and punishment a crime" the world over — according to Tolstoi, and the United States, with her most progressive methods of dealing with criminals, is in his judgment as much of an offender as Russia with her more primitive system of retribution. If the "Resurrection" teaches a true lesson — that lesson needs to be learned by Americans, and if his ideas are mistaken — they are worthy of consideration as the thoughts of the greatest living artist and moralist of the present day.

E. A. GOLDENWEISER.

WASHINGTON, *November 25, 1909.*

Crime a Punishment and Punishment a Crime

(LEADING THOUGHTS OF TOLSTOI'S "RESURRECTION")

LIGHT waves sent out by fixed stars reach the earth after years, decades, or centuries of travel. The light emanating from the sun strikes the earth, is reflected by it and carries its image to the stars, which in turn reflect the light, and the image finally comes back to earth. On this scientific observation is based the fancy that had we optical instruments sufficiently sensitive to gather the light waves on their return and to reproduce the image they contained, we could see with our own eyes any past event which had taken place on earth. For example, if we wished to see what was happening a hundred years ago, we could do so by pointing our instrument at a star from which it took fifty years for the light waves to reach here, since fifty years ago that star reflected the light which had left the earth another half century earlier.

Had we at our command such an imaginary apparatus, it might be curious to direct it to a star reflecting a picture of the city of Madrid on May 30, 1680. On that day the marriage of King Charles II to Mary Louise of Orleans was celebrated, and twelve heretics were publicly burned at the stake in the presence of the royal couple. To a modern observer the pageant would appear very imposing.

At the head of the procession comes the chief inquisitor from Toledo. Behind him the choir of the royal chapel, singing the "Miserere," then the chief of the Dominicans and the monks, followed by the emblem of the Inquisition, the green cross covered with black crepe; members of the judiciary, and the censors, representatives of the learned classes, officials of the Inquisition with lighted green candles, a white cross, the maiden attendants of the tribunal of the Inquisition, carrying lighted white candles; after that come Inquisitors, Dominicans, Franciscans, Trinitarians, Brothers of Mercy, Barefooted Brothers, the Marquis de la Vega, Knight of the Order of St. Jacob, and the Duke of Medinacelli; banners of the Inquisition; the Marquis of Cogulado; the orphans and the foundlings.

The procession comprises seven hundred people and closes with five bearers of the stakes of the Inquisition.

The market place is reached. The chief inquisitor descends from the covered seat on which he was carried and approaches the altar in the center of the place. He dons the raiment of sacred service. He reads a mass. Then a Dominican monk delivers a sermon on the text: "Arise, O Lord, and destroy thy enemies!" Then the verdicts of the tribunal are read. Each prisoner as his name is called is led to the platform and locked in a separate cage. One man and one woman at the sound of their names loudly beg for mercy; they repent their sins and consent to all the demands of the tribunal; they are granted their lives, but are sentenced to life-long imprisonment. One by one the other unfortunates are taken out by the executioners and led to their pyres; they are fastened to the stakes by iron collars and the wood is piled around them. The first fire brand is thrown in the name of the King, and soon all the stakes and the victims are encircled by flames.

Although the day is hot and sultry, the King remains in his seat of honor to the end. At nine o'clock the last heretic expires in agony but guards stir the fire all night, and in the morning they cover the platform with a thick layer of earth.

What would be our sensations if we were to witness this event of long ago? We would be shocked and outraged at the sight, and would earnestly scan the faces of those who participated, in an effort to ascertain their thoughts and feelings during the performance of their barbaric deed. We would, however, discover no trace of any feelings similar to those which we ourselves experienced while watching the procession. Each member of it is doing his best, and is earnestly and solemnly trying to perform his part with propriety. Not a single muscle of their faces indicates any doubt as to the justice of the execution of their unfortunate brethren. Quite the contrary. In performing their allotted duties, they all seem perfectly at ease and indifferent to the rest of the procession; they are evidently thinking of the appearance they make or of utterly foreign matters, and are not in the least concerned about the terrible significance of the deed which they are helping to perform.*

* The Spanish translator of this essay here stated that J. Rizi, a painter, who lived at the time that this event took place, reproduced the spectacle in a picture, and the natural unaffected expressions of the faces in the procession proved the accuracy of the above description. This painting was intended to preserve the memory of Charles II, and is exhibited (No. 1016) in the Prado Museum at Madrid.

After two centuries of progress have disclosed to us the barbarity and the futility of such proceedings, we realize the incongruity of the deed which was performed with such firm belief in its justice and reasonableness, and we are shocked the more by the unconscious solemnity of the performers. Imagine a spectator of that atrocity of May 30, 1680, who experiences sensations similar to our own; a man who is born in the dark ages, but who has not only developed ideas of humanity two centuries in advance of his contemporaries, but whose entire cycle of emotions reflects the attitude of the twentieth century; imagine such a man, and you will have a clue to Tolstoi's attitude toward modern penal actions, which he has sincerely and truthfully depicted in his description of Maslova's trial in the "Resurrection." Tolstoi's opinions and feelings in regard to that trial will be comprehended by the masses only after the passing of several generations.

Had our imaginary apparatus the additional power of reproducing the accompanying sounds of far-away events it would be well worth while to turn our attention to the Bishopric of Otten in Switzerland in the first quarter of the sixteenth century. At that time the local inhabitants were alarmed by an enormous and rapidly increasing number of mice which were devastating the fields and threatening the community with famine, and the people appealed to the ecclesiastical tribunal, begging it to excommunicate the mice. A regular complaint was filed, and the mice were summoned to appear in court. Their non-appearance was counted against them and the prosecutor insisted that a decision be rendered. The court assigned the task of defending the mice to a famous lawyer, Barthelemy Chassanée. Our apparatus would reproduce the following speech of the prosecutor who represented the interests of the injured population:

"GENTLEMEN: These poor people who are standing before you with tears in their eyes — appeal to your justice the same as in antiquity the people of the Major and the Minor Isles begged the Emperor Caesar Augustus for soldiers to protect their fields against the ravages of hordes of rabbits. You have a stronger weapon than the Emperor's soldiers, and you are better able to protect these poor people from the hunger and destitution brought upon them through the ravages of the animals which spare neither grain nor vine. They are threatened by a devastation similar to that caused by a buffalo which spoiled the fields, the vineyards and the forest of the kingdom of Caledonia — described in Homer's *Iliad*, and similar to the calamity caused by the fox which Themis sent to the city of Thebae. You know the evils which accompany the appearance of hunger in a land. These evils are testified to by the mothers who

devoured each other's children, and who are mentioned in the Fourth Book of the Kings. The investigations which have been made by your order show the extent of the damage caused by the mice. All the necessary forms have been observed, and it remains for you to render a just verdict. The people beg you to order the animals out of their present domicile, and into a specified section of the land; and they also beg you to perform the religious rites prescribed by our Mother, the Holy Church. Their demands are sensible and well founded; you will surely render an appropriate decision."

To this, Bartheleemy Chassanée, the counsel for the defense, replied:

"GENTLEMEN: You have chosen me to defend these poor animals and you will permit me to demonstrate that all the proceedings against them are ill-founded."

The counsel proceeded to prove by obvious arguments that the defendants being animals and possessing no reason could not commit a crime, and consequently should not be punished. He then quoted from the Scripture and from classical authors and proclaimed emphatically that

"these animals were committing actions which were fully sanctioned by Divinity, for does not the Scripture read that the fruits of the earth are made for animals as well as for men, and does that not mean that animals have a right to use the fruits for food? The animals were acting in accordance with the laws of God and of Nature, and have committed no offense; they should not be damned or punished. The court should not forget that in excommunicating the mice it would go against the will of God who sent the animals to punish men for their sins. The prosecution should be quashed, and the defense requests the court to do so."

Do not think for a moment that this was a frolic or done for the amusement of children. Far from it. The above quotations are made from the records of regular courts of law, and grown men were on the bench and at the bar. Trials of animals, such as flies, caterpillars, mice, moles, and others, were common occurrences, and the same Bartheleemy Chassanée made so great a reputation for himself by publishing a detailed manual of such trials and an account of the rules of procedure and legal practice in such cases that he was later appointed to a high post as a magistrate over men, not animals.

Let us imagine ourselves attending such a trial and listening to the arguments of the counsel, and our sensations will give us a clue to what Tolstoi, who is centuries ahead of us, thinks of the proceedings and the methods of a modern court, which

seems to us to perform the necessary task of criminal retribution in a perfectly rational manner.

To illustrate: In depicting a trial Tolstoi immediately and graphically brings out a feature of criminal practice which cannot escape the notice of an observer uninfluenced by the accepted routine, but which passes unobserved by most. It is but natural to suppose that men who have come together to clear up a murder case and to try the murderer would on the one hand be interested in the sad fate of the victim, and on the other, in the future of the culprit. In reality, a trial does not seem to be concerned with either of these things, and what is said and written about the victim is disgusting in the extreme. Here, for instance, is the record of the post-mortem examination of Smyelkov's corpse:

- (1) Ferapont Smyelkov's height was two arshins and twelve vershoks.*
"I declare, he was a strapping fellow," the merchant, with an interested mien, whispered over Nekhlyudov's ear.
- (2) His age was, from external appearances, approximately fixed at forty years.
- (3) The body had a bloated appearance.
- (4) The color of the integuments was greenish, here and there tinged with darker spots.
- (5) The cuticle on the surface of the body had risen in postules of different size, and in places had come off, and was hanging in the shape of large flaps.
- (6) His hair was dark blond, thick, and at the touch, came out of the skin.
- (7) The eyes stood out of their sockets, and the cornea was dimmed.
- (8) From the apertures of the nose, of both ears, and of the cavity of the mouth, a lathery, foamy, serous liquid was discharged, and the mouth was half opened.
- (9) There was no perceptible neck, on account of the bloated condition of the face and chest. And so on, and so on.

And here is the account of the decedent's internal organs, which apparently were not in his body but in jars of various dimensions:

On February 15, 188-, I, the undersigned, at the request of the medical department, as given in writing in No. 638, "the Secretary, who had such a soporific effect upon all persons present, began in a determined tone, raising the diapason of his voice, as though wishing to dispel sleep," in presence of the assistant medical inspector, have made the following examination of the internal organs:

- (1) Of the right lung and of the heart (in a six-pound glass jar).
- (2) Of the contents of the stomach (in a six-pound glass jar).
- (3) Of the stomach itself (in a six-pound glass jar).

* An arshin equals twenty-eight inches and a vershok one and three-quarters inches. This and all following quotations of Tolstoi's text are taken from Leo Wiener's translation, Dana Estes & Co., Boston.

(4) Of the liver, the spleen, and the kidneys (in a three-pound glass jar).

(5) Of the intestines (in a six-pound glass jar). And so forth.

Of the defendants, their past and their present, their impending fate and their future — not a proper word was said during the entire discussion.

Tolstoi feels that the motive of the trial is not sympathy, but selfish anxiety, pure and simple. Since these people have committed the murder," think the judges and the jurors, "let us put them away, or else they may as likely as not do away with one of us."

? This indifference to everything except their own personal safety takes one aspect with the judges who are performing their habitual every-day task, and another with the jurors who react more directly to what is going on about them. The judges think about their private needs and troubles, totally oblivious to what is happening; the jurors show a certain interest in the examination. But in what manner? "Evidently he was a great hand at drinking," said the merchant juror — when the presence of a large amount of wine in the deceased Smyelkov's stomach was mentioned. "Well, he had a good-sized finger," the same juror remarked later, after he had tried on the dead man's ring which was placed on the table with other exhibits; "as big as a cucumber," he added — obviously enjoying the conception of the hero which he had formed of the poisoned merchant. This manner of interest has little in common with sympathy for the deceased. The jolly juror seemed to approve heartily of the poisoned man's taste in recreations, for during the recess in the jury room he exclaimed: "Well, he was a great carouser! In Siberian fashion. He knew a thing or two when he selected such a girl to kiss."

The defendants are kept behind bars and under guard so that the judges can safely satisfy their curiosity and watch them — like animals in a menagerie.

Tolstoi cannot conceive why no one realizes the great responsibility and even the audacity of a common mortal assuming, as he does in a criminal trial, that he may separate his neighbor from his family and his friends, and subject him to the tortures of a punitive régime and of compulsory hard labor for a number of years. To Tolstoi, the participants of a trial seem to have about as much interest in the defendant as the undertaker has in a corpse which he takes to the graveyard. Does an undertaker's establishment puzzle about the mysteries of

life and the fateful trend of events which lead to the death of all living things, or of the effects on human existence of the inevitableness of death? According to Tolstoi, the modern criminal tribunal is just as little concerned about the essence of the crime and the soul of the transgressor; the courts simply bury the individuals whom society hands over to them to dispose of.

Tolstoi's critics accuse him of presuming to make himself judge of the trial and the judges. Nothing can be less like him; he merely depicts the court as he sees it and the inner motives of the judges as they are revealed to him. In describing the muddled form of the question as presented to the jury, he does not wish to show how bad it is to neglect the provisions of Section 760 of the Code of Criminal Procedure, but to demonstrate the futility of what the jurors are doing, even when the questions are properly formulated.

The procedure would have been just as absurd had Maslova been acquitted. Tolstoi is not concerned about the error committed by the court, but about the essential immorality of all criminal trials. That Maslova suffered least of all from being the victim of an error is evident from her conversation with Nekhlyudov in the prison hospital when he returned from the country and handed her a photograph which he had found:

She raised her black eyebrows in surprise, looked at him with her extremely squinting eyes, as though to say, "What is this for?" and silently took the envelope and put it back of her apron.

"I saw your aunt there," said Nekhlyudov.

"You did?" she said, with indifference.

"Are you well here?" asked Nekhlyudov.

"Yes, I am," she said.

"Is it not too hard?"

"No, not very. I am not yet used to it."

"I am very happy for your sake. In any case, it is better than there."

"Than where?" she said, and her face was flushed with a blush.

"There in the prison," Nekhlyudov hastened to say.

"What makes it better?" she asked.

"I think the people are better here. There are none here as there were there."

"There are many good people there," she said.

"I have taken measures for the Menshows, and I hope they will be released," said Nekhlyudov.

"God grant it. She is such a charming old woman," she said, repeating her old definition of the woman, and slightly smiling.

"I shall leave for St. Petersburg to-day. Our case will soon be heard, and I hope the verdict will be set aside."

"Whether it will be or not, is all the same now," she said.

The whole force of the characterization of Maslova's interesting personality lies in the fact that an acquittal would have made no difference in her moral condition.

Tolstoi's impression of the trial is that neither the prosecutor who pleads for conviction nor the counsel who pleads for acquittal, neither the court which sentences the convicted, nor that which releases the acquitted, does anything to save a life from going to ruin nor to safeguard society. This was the "something" which Nekhlyudov felt that he saw in the procedure of trial and punishment — and which others failed to see.

The method of trial depicted by Tolstoi is the best that humanity has devised — the trial by jury — and yet Tolstoi is most condemnatory in his attitude toward it.

The work that the judge and the jury are doing, supposedly in the interest of justice, does not really affect their souls, and, as a result, every one of the participants of the trial is in his mind occupied with outside matters, and it is a matter of grave significance that while apparently engaged in an occupation which requires the highest degree of altruism — (is not a criminal trial supposed to be based on sympathy for the victim, for society and for the culprit?) — the participants are really absorbed in their own personal egotistical affairs.

Tolstoi is of the opinion that the artificiality of the whole system of criminal retribution is shown by the fact that convicts in prison, in transit, and at hard labor — who are bearing punishment and who, according to the spirit of the law, should be going through a regeneration — in reality do not feel any such effect from the penal régime, and remain the same in all their thoughts and actions and are just like other people and like their former selves.

The men who do lose their human qualities are not the convicts, but the guards, jailers, inspectors, supervisors, gendarmes, and all the rest, who assist in carrying out the verdicts. They are delegated to perform a duty which is revolting and the performance of which must needs be bigotry, affecting the entire personality of the official. Nekhlyudov expresses this thought in the following manner:

"The trouble is that people think that there are conditions under which one may treat men without love, whereas there are no such conditions. Things may be treated without love: One may chop wood, make bricks, forge iron, without love, but people cannot be treated without love, just as one cannot handle bees without care. Such is the property of the bees. If they are care-

lessly handled by a person, they hurt both themselves and him. Just so it is with people. This cannot be otherwise, because mutual love between men is the fundamental law of human existence. It is true a man cannot make himself love as he can make himself work, but from this it does not follow that people may be treated without love, especially if something is demanded from them. 'If you feel no love for men — keep your peace,' Nekhlyudov thought, addressing himself. 'Busy yourself with yourself, with things, only not with men. * * * * Permit yourself to treat people without love,— and there is no limit to cruelty and bestiality.'"

The hardened sensibilities of those who carry out the punishments decreed appear in many scenes in the light just indicated. Here is a quotation:

"May I not see Menshov in his cell?" asked Nekhlyudov.

"You will be more comfortable in the assembly-room."

"No, it would interest me there."

"What interest can you find there?"

Just then the dandyish assistant came out of the side door.

"Please take the prince to Menshov's cell. Cell twenty-one," the superintendent said to his assistant, "and then I shall have her out in the office." * * *

The assistant superintendent was a blond young officer, with blackened moustache, who was spreading around him an atmosphere of eau de Cologne.

"Please, follow me," he turned to Nekhlyudov with a pleasant smile. "Are you interested in our establishment?"

"Yes; and I am also interested in that man, who, so I was told, is quite innocent."

The assistant shrugged his shoulders.

"Yes, such things happen," he answered calmly, politely letting the visitor pass before him into the stinking corridor. "Often they lie. If you please!"

Or, here is an account of Nekhlyudov's interview with the General of the gendarmes in St. Petersburg:

"But he needs scientific books; he wants to work."

"Don't believe that." The General was silent for a while. "That is not for work. Nothing but unrest."

"But they have to do something to occupy their time in their heavy situation," said Nekhlyudov.

"They always complain," said the General. "We know them."

He spoke of them in general as of some especially bad tribe of men.

"They are furnished such comforts here as one will rarely find in places of confinement," continued the General.

And, as though to justify himself, he began to tell in detail of all the comforts which the prisoners had, as though the chief aim of this institution consisted in providing pleasant quarters for its inmates. * * * *

"They get books, both of a religious character and old periodicals. We have a library. But they do not like to read. At first they seem to be interested,

and afterward the new books remain half uncut, while the pages of the old ones are not turned over. We have tried them," said the baron, with a distant resemblance to a smile, "by putting pieces of paper in." The papers remain untouched. Nor are they kept from writing," continued the General. "They get slates and pencils, so that they may write for their amusement. They may rub off what they have written, and write over again. But they don't write. No, they very soon become very quiet. Only in the beginning they are restless; and later they grow fat, and become very quiet," said the General, without suspecting what terrible meaning his words had.

This General knows no more about a human soul and its longings than he could learn from the ghosts which appear to him in his spiritualistic sittings. The interview with Nekhlyudov had, in fact, interrupted the General's conversation with Joan of Arc, whose spirit was about to tell him, through the revolutions of a saucer, in what manner souls would recognize each other after death.

Another case in point is the memorable figure of the transport officer. To quote:

"One feels so happy to meet an educated man here in Siberia. Our fate, you know yourself, is a very sad one. It is hard when a man is used to something else. There is an opinion abroad that an officer of the guard must be a coarse man without any education. They never consider that a man may have been born for something quite different."

The red face of this officer, his perfume, his ring, but more especially his disagreeable laugh, were quite repulsive to Nekhlyudov. * * * * Having listened to the officer's words and considering his mood, he remarked seriously:

"I think that in your occupation you can find consolation by alleviating the suffering of the people," he said.

"What suffering? They are a terrible lot."

The officer said a few words about his sympathy for the prisoners (he was not like other guards), and then tried to make Nekhlyudov listen to a piquant story of a girl prisoner who "was a Hungarian by birth, but had the eyes of a Persian woman."

The same impression is gained from the police sergeant in the station house where a prisoner who was killed by a sun-stroke was taken:

"Carry him to the dead house," said the sergeant. "You come to the chancery, and sign a receipt," he added to the soldier of the guard, who all this time stuck closely to the prisoner.

We obtain a life-size picture of this sergeant from one remark:

"What is this gathering for?" suddenly was heard a commanding voice, and to the crowd collected around the prisoner strode with rapid steps a sergeant of police, in an exceedingly clean and shining blouse and even more shining long boots. "Move on! You have no business standing here!" he said to the crowd, before he knew what they were doing there. When he came close and saw the dying prisoner, he nodded his head approvingly as though he had expected that very thing.

All these characters seem to be especially prone to foppishness. If nothing else, the radiance of their boots always distinguishes them. Here's another case:

Having come close, and recognizing Nekhlyudov (everybody in the prison knew him), the under-officer put his fingers to his cap, and, stopping near Nekhlyudov, said: "Here it is not permitted. At the station you may, but here it is against the law. Don't stop! March!" he cried to the prisoners, and, trying to appear dashing, in spite of the heat, galloped off in his new, foppish boots to his place.

The unnaturalness of the situation is accentuated by the very spotlessness of the officers' boots, their greased mustaches, and the smell of perfumed cologne, just as the unnaturalness of the men being locked up is accentuated by the sound of Clementi's exercises, played loudly by the warden's daughter; this piece, however, while admirably played, always broke off at a certain place which seemed bewitched.

Not only is the position of the prisoners' legal guardians equivocal, but also that of any outsider who approaches them, even though he may be moved by the noble intention of alleviating their fate, and of rendering them spiritual and material relief. The representative of an English evangelical society who visits the prison for transients in Siberia and moralizes to the prisoners, supplying a certain number of bibles to each cell, looks positively ridiculous. The artificiality and unnaturalness of Nekhlyudov's personality is the result of the awkwardness of the part which fate had assigned to him and which he had accepted of his free will.

Although this spectacle was not new to Nekhlyudov, although he had, in the last three months, frequently seen these four hundred criminals in all kinds of situations,—in heat, in a cloud of dust which they raised with their feet dragging the chains, and on the stops along the road, and in the yards of the halting places during warm weather, where appalling scenes of open immorality took place,—he experienced an agonizing feeling of shame and a consciousness of guilt before them every time he went in among them and felt their attention

directed to himself. Most oppressive for him was the fact that an irrepressible feeling of loathing and terror mingled with this sensation of shame and guilt. He knew that, under the conditions in which they were placed, they could not be anything else than what they were, and yet he could not suppress his feeling of loathing for them.

Real help can come only from him who is strong in spirit and who does not deal with the prisoners from the outside, but is imprisoned and robbed of his freedom in the same way that they are. Maslova's condition on the road, which was rendered very hard morally by the "loathsome men, who, like the vermin, were changed at each stopping place, but were always as forward, persistent and annoying," was alleviated only through her "nearness to Theodosia and Taras, who having found out about the importunities to which his wife was subjected, had himself arrested, so as to defend her and had traveled as a prisoner with the rest all the way from Nijny." The source of her moral regeneration, her resurrection, was her transfer to the group of political prisoners. "Her intercourse with her new associates opened up to her such interests in life as she had had no conception of." Such "wonderful" people, she put it, as she was going with now, she not only had never known, but could not even have imagined.

"How I wept at being sentenced!" she said. "But I ought to thank God; I have learned things I should not have known in a lifetime." She was delighted with all her new companions; but more than all she admired Marya Pavlovna. She not only admired her, but loved her with a special, respectful and rapturous love. She was surprised to see this beautiful girl, the daughter of a rich general, who could speak three languages, conducting herself like the simplest working woman, giving away everything which her rich brother sent her, and dressing herself not only simply, but even poorly, paying not the least attention to her looks.

Ever since Katyusha knew her, she saw that wherever she was, and under whatsoever circumstances, she never thought of herself, but was concerned about serving and aiding others, in large and in small things. * * * * Just as the hunter is bent on finding game, so all the interests of her life consisted in finding an occasion to do some one a good turn. This sport became a habit with her and the business of her life. She did all this so naturally that those who knew her no longer valued it, but demanded it as a matter of course.

It would be a mistake to think that Tolstoi idealizes political criminals. Not in the least. According to Tolstoi, they are wrong inasmuch as they wish to carry out their ideas by force. But in his picture of them he shows what their superiority consists in, namely, they serve an idea for its own sake and they serve not as preceptors, or moralizers, not as rulers, or as

philanthropists, but as colleagues, as co-workers and co-sufferers.

The absence of this feature in Nekhlyudov's activity is the fundamental reason of the dissatisfaction which he himself feels and which others experience toward his generous acts; this is felt not only in his relation to the prisoners but even when he gives up the land of his Kuzminskoye estate to the peasants:

Everything was arranged as Nekhlyudov had wished and expected; the peasants received their land at thirty per cent less than was asked in the neighborhood; his income from the land was cut almost in two, but that was more than enough for Nekhlyudov, especially in conjunction with the sum which he received for the timber which he had sold, and which he was to net from the sale of the chattels. Everything seemed to go well, and yet Nekhlyudov felt all the time ashamed of something. He saw that the peasants, notwithstanding the thanks which some had expressed to him, were dissatisfied and had expected something more. It turned out that he had lost a great deal, and the peasants did not receive what they had expected.

Tolstoi's attitude toward political prisoners and his entire lack of bias in this respect, his perfectly matter-of-fact way of looking at them, is apparent from the scene of Nekhlyudov's first interview with Vyera Bogodukhovskaya in the prison:

She spoke to him, evidently fully convinced that it was very interesting and agreeable for him to hear all the secrets of the popular cause. But Nekhlyudov looked at her miserable neck and at her scanty, dishevelled hair, and wondered why she was doing all that and telling him about it. He pitied her, but in an entirely different manner from that in which he pitied pleasant Menshov, who was locked up in a stinking prison for no cause whatsoever. He pitied her more especially on account of the evident confusion which existed in her mind. She obviously considered herself a heroine, ready to sacrifice her life for the success of her cause, and yet she would have found it hard to explain what her cause consisted in, and what its success would be.

Neither is Tolstoi's description of one of the leaders of the political exiles — Novodvorov — any more flattering. "His mental powers," says Tolstoi, "his numerator, were great, but his self-esteem, his denominator, was disproportionately formidable and had long outgrown his mental powers."

There is in the "Resurrection" a general characterization of political criminals which does not materially differ from what has been said about them by others, except that it is done with Tolstoi's masterly hand, and his own statement of the effect of a summer rain on a landscape may serve as an analogy; in his hands all objects seem to take a peculiar lustre, the

green becomes greener, the yellow becomes more yellow, and the black becomes blacker.

Upon knowing them better, Nekhlyudov convinced himself that they were neither the unconditional villains, as which they presented themselves to some, nor the unconditional heroes, such as others held them to be, but ordinary people, among whom there were, as everywhere else, good and bad and mediocre individuals. There were among them some who held themselves in duty bound to struggle against the existing evil; there were also others who had selected this activity from selfish, vainglorious motives, but the majority were attracted to revolution by a desire for danger, risk, and enjoyment of playing with their own lives — feelings which are common to all energetic youth, and which were familiar to Nekhlyudov from his military life. They differed from other people, and that, too, was in their favor, in that their requirements of morality were higher than those current in the circle of common people. They regarded as obligatory not only moderation and sincerity of life, truthfulness, and unselfishness, but also readiness to sacrifice everything, even their lives, for the common good. Therefore, those of them who were above their average stood very high above it and represented rare examples of moral excellence; while those who were below the average stood much lower, representing a class of people that were untruthful, hypocritical, and, at the same time, self-confident and haughty. Consequently, Nekhlyudov not only respected, but even loved, some of his new acquaintances, while to others he remained more than indifferent.

On the other hand, the persecutions to which the political offenders are subjected en masse, and the cruel treatment which they receive, are described in the following moving way:

These people were treated as fish are when caught with a seine: the whole catch is thrown out on the shore; then all the large fish that can be used are picked out, and the small fry are left to die and dry up on the land. Just so, hundreds of men who, apparently, were not only innocent, but who could in no way be dangerous to the government, were arrested and frequently held for years in prisons, where they became infected with consumption, or grew insane, or committed suicide. They were kept in these prisons only because there was no special reason for releasing them, whereas, by keeping them in jail, they might be of use in order to clear up certain questions at the inquest. The fate of all these people, who frequently were innocent even from the government's standpoint, depended on the arbitrariness, leisure, and mood of the officer of gendarmery or police, of the spy, the prosecutor, examining magistrate, governor, or minister. * * * They were treated as men are in war, and they, naturally, employed the same means which were used against them. And just as the military always live in an atmosphere of public opinion which not only conceals the criminality of the deeds committed by them, but even represents them as heroic — so there existed for the politicals a favorable atmosphere of public opinion in their own circle, by dint of which the cruel acts committed by them, at the risk of losing liberty, life, and all that is dear to man, presented themselves to them not as bad deeds but as acts of bravery. Only thus could Nekhlyudov explain the remarkable phenomenon that the meekest people, who were not able to cause a living being any pain, or even to look at it, calmly

prepared themselves to kill people, and that nearly all considered murder in certain cases, as a means of self-defense and of obtaining the highest degree of public good, both lawful and just. The high esteem in which they held their work and, consequently, themselves, naturally flowed from the importance which the government ascribed to them, and from the cruelty of the punishments to which they were subjected. They had to be of a high opinion of themselves in order to be able to bear all they had to bear.

When reading Tolstoi's description of officials and of institutions one involuntarily asks one's self whether his view is not extremely subjective, whether he does not mistake the seeming for the real? A comparison of his views and those expressed by other authoritative observers proves, however, that he is right. To illustrate, our judges did not like Tolstoi's description of the mental condition of the participants in Maslova's trial because they were all pictured as being occupied entirely with themselves and their private affairs. But let us compare this description with that given by other novelists, and we shall see that Tolstoi was not the only one to gain such an impression in the courtroom.

For example, the last part of Dostoyevski's "Brothers Karamazov" is a long, tiresome, detailed description of a trial and contains an analysis of the mental attitude of the participants which reveals in the experienced judge, in the consumptive state's attorney — whose speech in that case was his swan song — and even in the counsel, famous for prostituting his mental powers, the same absorption in their own personal affairs during the performance of their judicial functions. Similarly, the outcome of the trial in Dostoyevski's book, the conviction of Dmitri Karamazov for a deed of which he was innocent, was not the result of what was proved at the trial in connection with the case; he was convicted of patricide, not because it was clear that he had committed the deed, but because of his general vicious and licentious character. In fact, the author was morally satisfied with the verdict. His spokesman at the trial exclaimed about the jury:

"The good peasants stood up for themselves."

In this respect only does Dostoyevski's attitude differ from Tolstoi's.

Tolstoi's description of the judges aroused a dissatisfaction amounting to indignation among the members of the bench. This was due, undoubtedly, to a misunderstanding on their part, and was the result of offended self-esteem which pre-

vented them from looking at the matter from the author's point of view. Tolstoi not only considers a criminal trial as unnecessary, purposeless and cruel, but also revolting to human nature. The question in his mind is: How can so many people spend so much time in doing, by vocation and of their own free will, something that is essentially inhuman? Tolstoi answers this by pointing out that, while apparently serving justice, the judges are really occupied with other matters. They do their work mechanically, as a matter of habit, or when it is new to them, out of curiosity, but they never fully realize the awful significance of a criminal tribunal. The reason for their ignorance of the full meaning of so-called criminal retribution, Tolstoi sees in the division of labor and of functions, in the artificiality of the present social structure which, in this case, results not in the greater efficiency of the subdivided activities but renders the participants of a cruel deed unconscious of the purport of that deed.*

From Tolstoi's standpoint, the extraneous thoughts which absorb the judges' attention are really their justification for being capable of holding court and ordering execution in the same way that the inquisitors ordered the "auto-da-fe." Tolstoi can better understand a judge who, during a trial, is absorbed by the thought of a meeting with Clara, the governess, or by the contemplation of a dinner in a lunchroom because his angry wife refused to cook one at home, than one who, with heart and soul, directs his conscious efforts toward locking up a man in jail, or separating him from his family and his home and driving him to the far-away mines of Siberia. This latter type is depicted by Tolstoi in the hero of "Ivan Ilyich's Death." Tolstoi's hope and desire is not to see a reform of criminal trials and of the judges, but a flat refusal of men to take part in such activities. Incidentally, it is a striking confirmation of the truthfulness of Tolstoi's picture that the trial judges consider the description of the senators remarkably accurate, and the senators think the same in regard to the trial judges.

In estimating the value of Tolstoi's description of a trial, this question arises: Does his attitude reflect his present well-known views on questions of philosophy and ethics? Does he look at things through artificial and highly colored

* Can any other theory explain the statement made by the prison authorities in one of their reports in connection with the melancholy fact of the overcrowding of the workhouses in Russia, that "the direct outcome of the present situation must be the immediate establishment of new prisons, and the authorities are taking special pains in that direction?"

glasses, thereby giving a preconceived coloring to events? Not in the least. We find that Tolstoi took the same negative attitude toward criminal trials as early as the appearance of "War and Peace." In describing the court-martial of Pierre Bezukhi, Tolstoi incidentally gave the following characterization of trials in general:

Their only object is to secure a conviction. The court's questions neglected the live essence of the matter, and eliminated the possibility of its disclosure; the questions were similar to all questions asked in court and served only to supply the trough along which the judges wished the answers to flow, leading to the desired end, that is, to conviction. As soon as he began saying something which did not serve the purposes of the prosecution, the trough was removed and the water could flow wherever it liked. Besides, Pierre experienced what the defendant experiences in all trials, namely, bewilderment at the mass of purposeless questions hurled at him.

Tolstoi's impression of a criminal trial at that time, we see, is identical with what it is now many years later, when his moral philosophy has reached its attitude of non-resistance to evil. We might recall in this connection another passage in "War and Peace" which illustrates the presence, years ago, of the fundamental convictions which Tolstoi now voices. The turning point in Nekhlyudov's ethical development is reached when he joins the army, and in "War and Peace" Tolstoi remarks:

Military service in general corrupts men by placing them into surroundings of absolute idleness, that is, relieving them from rational and useful labor, and from common human obligations, in place of which it places only the artificial honor of the regiment, the uniform, the flag, and on the one hand unlimited power over other men, with slavish obedience towards superior officers on the other.

In the beginning of one of the chapters of the second volume of "War and Peace" we read the following:

The Bible tells us that absence of labor, idleness, is the condition of the first man before his fall. The love of idleness remains in the fallen man, the curse still hangs over man, and not only because he must eat his bread in the sweat of his brow, but because his moral qualities prevent him from being idle. If man found a state in which, while remaining idle * * *, he could feel himself useful * * *, he would find one side of primeval happiness. Such obligatory and irreproachable idleness is granted to a whole class of people, the military class.

It is evident that Tolstoi's views are of ancient origin, and in his picture of the courtroom, we see features which are real.

Everyone does not observe them, but Tolstoi has seen them ever since he cast his all-penetrating eye in that direction. A confirmation of Tolstoi's observation that criminal trials are a means of conviction, not necessarily of justice, may be found from an unexpected but none the less convincing source, namely, "The Summary of Russian Criminal Statistics for Twenty Years (1874-1894), published by the Ministry of Justice." In commenting upon the relatively high percentage of acquittals by the justices of the peace of the Warsaw district, the "Summary" explains that the cases tried before them are not looked into beforehand and, therefore, unfounded accusations are not eliminated — the justices of the peace are obliged to consider cases in which acquittals are unavoidable. This accounts for the abnormally high percentage of acquittals in these courts. In conclusion, the compiler of the "Summary" expresses the following opinion about convictions, thereby shielding the justices from criticisms. He says:

This state of affairs makes it apparent that justices of the peace pronounce verdicts of acquittal more frequently as a result solely of the method of procedure in their courts; their carefulness in determining the validity of the accusation and their desire to comply with the *requirements of law and justice* cannot be considered to be less pronounced than among the members of the higher tribunals.

This seems to imply that without such exceptional circumstances a higher percentage of acquittals could not exist side by side with a proper understanding by the justices of their official duty.

It would have been strange indeed had Tolstoi erred in his description of the inner world and the emotions of a judge, for Tolstoi penetrates unerringly into all kinds of inner worlds and all sorts of emotional situations, regardless of whether he has ever experienced, or could ever experience, the conditions or emotions. In all probability, Tolstoi never spent a night in a prison cell for women; and yet, what can be more real, truer or more alive than the description he gives of the inmates of Maslova's cell, with all their inner emotions, their thoughts and their desires. Here are the types:

The sullen, scowling, wrinkled Korableva.

The old woman, Menshova, who with her son was accused of arson and who bore incarceration with the greatest good humor ("such a charming old woman," says Maslova about her when asking Nekhlyudov to intercede for her and her son).

The red-haired prisoner, who had a fight with Korableva and then wept on her bunk, thinking that she was not heard, as only children weep, groaning and snuffling and swallowing her bitter tears. She wept because she had just been cursed and beaten and not given any liquor, because all her life she had seen nothing but scoldings, ridicule, affronts, and blows, and finally because of the memory of the sad ending of her first love for Fedka Molodenkov, the factory hand.

The proprietress of a saloon who was detained with her two children — who were with her because she had no place to leave them — was holding her girl between her legs and with agile fingers searching for vermin in her head and whispering to herself: "Why do I traffic in liquor? What shall I feed my children by?"

The prisoner who was called Khoroshavka (pretty one) for her neatness, who was no taller than a ten-year-old girl, swarthy, misshapen, with a long spine and very short legs.

The tall and stately sexton's daughter, who had drowned her child in a well, and who did not pay the least attention to what was going on around her, and was pacing to and fro, like a maniac, in the free space of the cell, abruptly and rapidly turning around whenever she reached the wall.

All these types stand before us as if hewn of stone and, it may be confidently asserted, have been made immortal by Tolstoi; with all their surroundings they will live in the minds of men just as long as the creations of the greatest masters of literature, such as Dante who, with his genius for imagination, created a picture of Hell itself.

When Tolstoi describes a person he apparently becomes transformed in feelings and sensations into that person. For instance, in depicting the unnatural condition of the audience gathered by the Countess Charskaya to listen to Kiesewetter, the English preacher, Tolstoi pointed out that, while all the others knelt down or wept silently, the countess' coachman "looked in surprise and fear at the foreigner, as though he had driven right into him with the shaft, and he did not budge."

In fact, Tolstoi describes with striking realism the sensations of an infant in its mother's womb. Let us refer to Katyusha when she ran out at night to the station to see Nekhlyudov, and he passed by, without glancing out of the car window. She was determined to throw herself under the wheels of the train.

But just then, as always happens in the first quiet moment after agitation, the child, his child, which was within her, suddenly jerked, and thumped, and then moved more softly, and then again thumped. And suddenly all that which a minute ago had so tormented her, so that it seemed impossible to continue to live thus, all her anger at him and her desire to have her revenge upon him even though through death, all that was suddenly removed from her.

This circumstance explains in a masterly way why Katyusha did not follow the example of the heroine of her favorite story, "The Calm," who threw herself into a pond because of a broken heart.

The last quotation in this connection is the account given of capital punishment and the sufferings of the condemned. It is couched in almost too simple phrases, but it is none the less tragic and moving. The passage is from Krystlov's story of the misfortunes which had turned him into a revolutionist. Here it is:

"In the prison, where I was locked up," Krystlov told Nekhlyudov (he was sitting with his sunken chest on a high sleeping-bench, leaning on his knees, and now and then looking at Nekhlyudov with his sparkling, feverish, beautiful eyes), "there was no especial severity. We not only conversed with each other by means of knocks, but met in the corridors, talked to each other, shared our provisions and tobacco, and at evening even sang in choirs. I had a good voice. Yes. If it had not been for my mother — she pined away for me — I should have been satisfied in prison — everything was pleasant and very interesting. Here I became acquainted, among others, with the famous Petrov (he later cut his throat with a piece of glass in the fortress) and with others. I was not a revolutionist. I also became acquainted with two neighbors to my cell. They were caught in the same affair, with some Polish proclamations, and were under trial for having tried to escape from the guard as they were being led to the railroad station. One of them was a Pole, Lozenski, and the other a Jew, Rozovski by name. Yes. Rozovski was nothing but a boy. He said he was seventeen, but he did not look more than fifteen. He was small and lean, with sparkling eyes, lively, and, like all Jews, very musical. His voice was still unformed, but he sang beautifully. Yes. They were led off to court while I was in prison. They left in the morning. In the evening they returned and said that they had been condemned to capital punishment. Nobody had expected it. Their case was so unimportant: they had merely tried to get away from the guard, and had not hurt anybody. And then it seemed so unnatural to execute such a boy as Rozovski was. All of us in the prison decided that this was only to frighten them, but that the decree would never be confirmed. At first all were stirred, but later they quieted down, and life went on as of old. Yes.

"One evening an attendant came to my door and mysteriously informed me that the carpenters had come to put up the gallows. At first I did not understand what he meant, what gallows he was talking about. But the old attendant was so agitated that when I looked at him I understood that it was for our two men. I wanted to converse by taps with my companions, but was afraid that they might hear it. My companions were silent, too. Apparently everybody knew it. There was a dead silence in the corridor and in the cells all evening.

"We did not tap or sing. At about nine o'clock the attendant again came up to my door and informed me that the hangman had been brought down from Moscow. He said this and went away. I began to call him to come back. Suddenly I heard Rozovski call to me across the corridor from his cell: 'What is the matter? Why do you call him?' I told him that he had brought me some tobacco, but he seemed to guess what it was, and continued asking me

why we did not sing, and why we did not tap. I do not remember what I told him; I went away as soon as I could, so as not to talk to him. Yes. It was a terrible night. I listened all night long to every sound. Suddenly, toward morning, I heard them open the door of the corridor, and a number of people walking in. I stood at the window of my door.

"A lamp was burning in the corridor. First came the superintendent. He was a stout man, and seemed to be self-confident and determined. He was out of countenance: he looked pale and gloomy, as though frightened. After him came his assistant, scowling, with a determined look; then followed the guards. They passed by my door and stopped at the one next to me. I heard the assistant calling out in a strange voice: 'Lozinski, get up and put on clean linen!' Yes. Then I heard the door creak, and they passed in. Then I heard Lozinski's steps, and he went over on the other side of the corridor. I could see only the superintendent. He stood pale, and was buttoning and unbuttoning his coat, and shrugging his shoulders. Yes. Suddenly he acted as though something had frightened him. It was Lozinski, who went past him and stopped at my door. He was a fine looking youth, of that exquisite Polish type: broad-chested, a straight forehead with a head of blonde, wavy, fine hair, and beautiful blue eyes. He was such a blooming, healthy, vigorous young man. He stood in front of my door so that I could see his whole face. It was a terribly drawn, gray face.

"'Krystlov, have you any cigarettes?' I wanted to give him some, but the assistant, as though fearing to be too late, took out his cigarette-holder and offered it to him. He took a cigarette, and the assistant lighted a match for him. He began to smoke, and seemed to be musing. Then he looked as though he had recalled something, and he began to speak: 'It is cruel and unjust. I have committed no crime. I —' Something quivered in his youthful, white throat, from which I could not tear my eyes away, and he stopped. Yes. Just then I heard Rozovski calling out something in the corridor in his thin, Jewish voice. Lozenski threw away the stump of his cigarette and went away from the door. Then Rozovski could be seen through the window. His childish face, with its moist, black eyes, was red and sweaty. He, too, was clad in white linen, and his trousers were too wide for him, and he kept pulling them up with both his hands, and was trembling all the while. He put his pitiful face to my window:

"'Anatoli Petrovich, is it not so? The doctor has ordered me to drink pectoral tea. I am not well, and I will drink some.' Nobody answered him, and he looked questioningly now at me, and now at the inspector. I did not understand what he meant by his words. Yes. Suddenly the assistant looked stern, and again he called out, in a wheezy voice: 'Don't be jesting! Come!' Rozovski was apparently unable to understand what was awaiting him, and went hurriedly along the corridor, ahead of them all, almost on a run. But later he stood back, and I heard his piercing voice and weeping. They were busy about him and a thud of steps was heard. He was crying and whining in a penetrating manner. Then farther and farther away — the door of the corridor rang out, and all was quiet. Yes. They hanged them. They choked their lives out of them with ropes.

"Another attendant saw the hanging, and he told me that Lozenski offered no resistance, but that Rozovski struggled for a long while, so that he had to be dragged to the gallows, and his head had to be stuck through the noose. Yes. That attendant was a stupid fellow. 'I was told, sir, that it was terrible.

But it is not. When they were hanged, they moved their shoulders only twice'—he showed me how the shoulders were raised convulsively and fell. 'Then the hangmen jerked the rope so that the noose should lie more tightly on their necks, and that was all: they did not stir again. It is not at all terrible.' ” Krystlov repeated the attendant's words, and wanted to smile, but instead burst out into sobs.

He was for a long time silent, after this recital, breathing heavily and swallowing the sobs that rose to his throat.

“Since then I have been a revolutionist. Yes,” he said.

We have seen that what strikes Tolstoi now and what struck him many years ago in the trial is that the court is not at all concerned with the one subject which is the reason for its existence; Tolstoi feels that the questions asked by the judges leave unrevealed the “live essence of things,” in fact “they exclude the possibility of ascertaining that essence.” The question is whether this attitude is the result of a preconceived idea or whether there are features in real trials which supply a basis for this generalization? To understand Tolstoi correctly in this matter, it will be well to resort to the method already used, i. e., imagine ourselves observing a trial in times long past in such manner as if they were taking place before our eyes to-day. In days gone by ordeals were a common practice. They were a procedure by which the guilt of the defendant and his liability to punishment were determined. One kind of ordeal was the test by water and fire. Note the description of such a test as given in a code of Anglo-Saxon laws for the tenth century:

When the test was to be applied the prisoner was conducted into a church. The spectators were divided into two lines, in which the numbers were equal. One line was ranged on one side of the church, the other on the other, one representing nominally the friends of the accused, the other the friends of the accuser. Between them, in the centre of the church, blazed the fire which was to purge or to blacken. All who were present were expected to be fasting and in a state of chastity. The priest passed up and down, sprinkling each with holy water, giving each holy water to taste. To each he offered the Book of the Word, and the Holy Rood, to kiss. Meanwhile the vessel of ordeal, filled with water, had been set over the fire. Four arbiters, two chosen from either side, pronounced in due time that the water boiled — that the hour was come. The rest of the congregation, who had hitherto preserved a solemn silence, now joined in prayer to Almighty God that he would make known his will in the issue. The accused advanced to the place of trial, his arm and hand swathed in fold upon fold of cloth or linen. At the bottom of the vessel, at elbow-depth, was a stone. This he had to snatch away unscathed himself, if he could, when, perhaps he was half blinded by the smoke from the burning wood, by the steam from the seething caldron, and by the fears which must have oppressed him, whether innocent or guilty. Here ended the first act of

the drama. After the expiration of three days came the final ceremony, when the bandages were unwound and the hand and arm exposed. Then, if the flesh was uninjured, it was taught that God had declared for an acquittal, but if any trace of scald appeared, the anger of heaven, it was supposed, had marked out the wrongdoer for punishment, and he suffered a sentence in accordance with the magnitude of the crime and the ferocity of the age.*

This method of a trial appears to us like a cruel farce, an occupation which can be seriously indulged in by lunatics alone. And yet, this is the way by which men thought at that time that they could arrive at the absolute truth. It is surprising that men expected to arrive at the truth from absolutely irrelevant facts, for what relation is there between a man's guilt or innocence, and the greater or smaller sensitiveness and recuperative power of the skin on his arm? But, as matter of fact, at that time men did not trust their own intellects, and expected God to guide them through the agency of ordeals; the more astonishing fact is that men at that time were interested exclusively in the mere guilt or innocence of the defendant; granted his guilt, they cared nothing about the motives which had induced him to commit the crime, and without even thinking of that, they felt themselves justified in inflicting cruel punishments and even death itself upon their neighbor. The very same thing and in like degree strikes Tolstoi in the trial of to-day. Tolstoi, like Bellamy in "Looking Backward," sees the present with eyes of the future; and he sees it not as a dream, but with a realism which for us is conceivable only in contemplating past events. Tolstoi sees in a crime no evidence of the evil will of any man; without a remainder he divides the motives into their constituent elements; the bad example of environment, the lack of forethought in dealing with our neighbors, the venality and the selfishness which underlie our modern economic structure. Let us cite Nekhlyudov's meditations about the boy who stole mats:

"It is evident that this boy is not a peculiar criminal, but a simple man (all see that), and if he has turned out to be what he is, it is due to the conditions which breed such men. And therefore it is obvious that, in order not to have such boys, one must try to do away with the conditions under which such unfortunate creatures are produced. If only a man could be found," thought Nekhlyudov, looking at the lad's sickly, frightened face, "who would have taken care of him when from want he was taken from the village to the city, and would have attended to his want; or even when in the city, after twelve hours' work in the factory, he went with his older companions to the inn — if a man had been found then, who would have said to him, 'Don't go, Vanya, it is not good!'

* A History of Crime in England, by Luke Owen Pike, London, 1873 (p. 53).

the lad would not have gone, would have not gotten mixed up, and would not have done anything wrong.

"But no such man, who would have pitied him, was found, not a single one, when he, like a little animal, passed his apprenticeship in the city, and, closely cropped in order not to breed vermin, ran his master's errands; on the contrary, everything he heard from his master and companions, during his sojourn in the city, was that clever is he who cheats, who drinks, who curses, who strikes, and who is dissolute.

"And when he, sick and deteriorated by his unhealthy work, by drunkenness and debauch, in a stupor and beside himself, as though in a dream, walked aimlessly through the city, and in his foolishness made his way into a barn and took perfectly worthless mats away from there, we did not try to destroy the causes which had led the boy to his present condition, but except to improve matters by punishing this boy! — Terrible!"

Such are Nekhlyudov's thoughts on the subject. Maslova's crime itself, taken in connection with her life's history, shows clearly by what imperceptible steps man approaches a criminal career under the modern social conditions. Maslova, the daughter of a dairy maid and a gypsy, was first befriended by her mistresses, then dishonored by Nekhlyudov; later she went from house to house as a servant. Her transformation into a prostitute is quite natural. Prostitution and crime are the twin evils of society; they have a common origin and are closely associated and intertwined with intemperance. The murder of Smyelkov, the wealthy merchant, is a fatal result of his seeking pleasure in a brothel — which is protected by the law — and in the hotel where the attendant and the maid, both accessories of Maslova's alleged crime, are eager to satisfy their generous guest's immoral propensities. By nature, Maslova is a good and a kind being. On the witness stand Kitaeva, the German proprietress of the resort, says about Maslova:

"An educated girl and chic. Educated in good family, and could read French. At times drank a little too much, but never lost her senses. A very good girl."

The sincerity of the witness in this respect is confirmed by the fact that after the verdict she sent through the baliff three roubles to Maslova ("selecting from a fairly large heap of coupons, which had been cut from bank bills earned by her, one of the denomination of two roubles and fifty kopecks; she added to that two twenty kopeck pieces and one ten kopeck piece"). The chief turning point in Maslova's career was, of course, the outrage committed by Nekhlyudov. He realized that at once, as soon as he recognized Katyusha Maslova on

the defendant's bench; after that during the trial "he felt like the pup which had misbehaved in the room and whose master grabbed it by the neck and stuck its nose into the mess it had made." Maslova realized his guilt even more clearly and at first objected strenuously to his help. When he first called on her in prison she was slightly under the influence of liquor and exclaimed: "You have enjoyed me in this world, and you mean to get your salvation through me in the world to come. Go away, go away!" Her old feeling for Nekhlyudov and the kindness of her soul began to reassert themselves gradually under the influence of the surroundings into which chance had thrown her on the road to Siberia. Her regeneration began when she gave up drink.

When trying to analyze the prison population into different classes, Nekhlyudov generalizes in the following manner:

Finally, the fifth category was composed of people before whom society was much more guilty than they were before society. Those were the outcasts who were dulled by constant oppressions and temptations like the boy with the foot-mats and hundreds of other people, whom Nekhlyudov had seen in the prison and outside of the prison, whom the conditions of life systematically lead to the unavoidable act which is called a crime. To such people belonged, according to Nekhlyudov's observations, very many thieves and murderers, with some of whom he had during this time come in contact. In this category he, having closely examined the matter, counted also all those corrupt and debauched men whom the new schools call a criminal type, and the presence of which in society is regarded as the chief proof of the necessity for criminal law and punishment. These so-called corrupt, criminal, abnormal types were, in Nekhlyudov's opinion, nothing else than those other people, against whom society had sinned more than they had sinned against society, but toward whom society was not guilty directly, but against whose parents and ancestors society had sinned long ago.

It is clear, therefore, that crime needs to be studied as a social phenomenon only to the extent that it is a reflection of the social evil which generates it. Tolstoi proclaims that *crime is a punishment to society for the prevailing venality, the indifference of neighbors to each other, and the general moral rottenness*; society is punished through the person of the criminal against whom it is obliged to protect itself and whom it must take care of. Every new crime is a new indication of a social evil the existence of which is proved by the crime; every crime is an outgrowth of the sins of society just like every one of *madam's* coupons is a reward of her base occupation. The criminal is like a shell which gathers into its various twists and folds the sounds that are around it, far and near, and reflects

them all blended into one peculiar noise. Tolstoi, with his great soul aching for the miseries of his fellow beings, perceived that the modern criminal trial is built on principles diametrically opposed to those explained above and one can hardly fail to see that the method of handling a case in court was bound to touch in a rough manner a sore spot in Tolstoi's soul.

A dramatic illustration of the inefficiency of a criminal trial is found in the irrelevant nature of all that is ascertained about Maslova during her trial; her real past which is well known to one of the jurors, Nekhlyudov, remains sealed. The discrepancy between real life and its appearance from the evidence is so great that Nekhlyudov's intimate knowledge of the truth has the sole effect of hindering him in the performance of his duty. The theory of criminal procedure is quite as bad as the practice. Take, for example, this paragraph from a text book by Professor Sluchevski, attorney-general of the court of appeals at St. Petersburg:

"A trial is concerned with practical results," says he. "The law considers it essential in the interests of order to protect society from crime through the punishment of culprits, it is the duty of a criminal court to ascertain whether the defendant has committed the crime with conscious intent. The imposition of the penalty depends on the presence of the evil will in the defendant. Thus, neither the causes of the act, nor the conditions which had brought it about, are within the scope of the court's inquiry." (Page 306.)

Another professor, Togantsev, the presiding officer of the same court of appeals, in speaking about the scope of criminal inquiry refers to the intentions of the compilers of the code "to have the absolute truth revealed in each case," and says, further:

"The opinion of the counsel for defense, and of some of the trial judges, that a detailed investigation and consideration at court of all the circumstances having an approximate, or a remote, a direct, or an indirect relation to the case and to the criminal, cannot endanger a correct judgment as to the guilt of the defendant, that, on the contrary, any limitation of the right to submit all the evidence would prevent a fair consideration of the case, this opinion is essentially incorrect and is at variance with the fundamental principles of the code of criminal procedure. The starting point of a criminal inquiry is the fact of the crime with all its surroundings, which determine the character, the 'corpus delicti,' the conditions and the legal significance of the deed; the evil will of the doer may be revealed by these circumstances, but it is not the business of the court to consider anything, which may have an interest as throwing light on the social and economic significance of the deed, or on the peculiarities of a certain 'milieu' or class to which the defendant belongs, but has no value in

determining the just penalty for a deed. A court is not called upon to reveal and explain social evils and maladjustments, but justly to apply the law."

A mere comparison of the ideas expressed by the authors just quoted and of Tolstoi's views, as put forth in his novel, shows the contrast between the modern court and that which Tolstoi expects of a social institution. His attitude toward what he sees in a courtroom is, of necessity, a result of that contrast.

The phrasing of the questions submitted to the jury especially surprises him. The unfortunate verdict in Maslova's case is, in the last instance, a result of the jurors' lack of comprehension of the meaning of the questions and the significance of a few words which they should have included in their verdict. By neglecting to say, "Yes, but without intent to kill," the jury unwittingly convicted Maslova of intentional homicide.

The questions relative to the guilt or innocence of the defendant are submitted to the jury after all the preliminary stages of the trial are over and after all the evidence is in. And what are the questions? They are a conundrum to a layman; the fateful questions on which the life of the defendant depends are not couched in live human words, but in words resembling conjuring and incantations. The formulation of the questions, which is the crucial point of the criminal trial, appears to Tolstoi to be the head of an ulcer, which is drawn over a criminal deed by the concerted action of the various branches of the civil authority.

Confirmation of Tolstoi's observations regarding the unintelligible language of the questions submitted to the jury may be found in an incident which occurred after the appearance of the "Resurrection," in connection with the widely known case of Nicholas Griaznov, who was tried for patricide in the court of Tula and was acquitted by the jury in the face of his own confession of guilt. The prosecuting attorney explained the acquittal by the fact that the jury did not fully understand the significance of the words "premeditation" and "previous agreement with other persons;" the jury meant to deny these, and instead acquitted the defendant altogether. The confusion of ideas in this case was discussed at length in the opinion of the attorney-general of the Senate, V. K. Sluchevski. In this opinion he based his concurrence with the views of the appellants partly on the fact that at the trial the defense submitted evidence that "Griaznov's late father had maltreated

and beaten almost to death all the members of his family, including his mother, who had frequently complained about it to her minister;" the attorney-general considered this as an admission of irrelevant matter, having no bearing on the case.*

In speaking of the realism with which Tolstoi reproduces his thoughts and his impressions, one is inclined to ask why he selected the case of a conviction of an innocent person, when he set out to demonstrate that the entire system of criminal retribution is artificial in form and cruel in substance? Would it not have been more to the point to take a person whose conviction was the result of his own misdeeds, and then to show how unjust and how cruel the penalty was, even granting the guilt of its victim?

The fact is that Tolstoi does not invent, he creates; and he does it not from afar, soaring above the events he describes, but from their very midst, placing himself right among his characters. It would have been a far-fetched, an unreal picture indeed, had Tolstoi depicted in Nekhlyudov a philanthropist, whose wrath had been aroused by the modern penal system and who had taken for that reason, alone, a lively interest in Maslova's fate. Such a novel would not have been imbued with a living reality. Had Maslova been sentenced to hard labor for committing a real murder, Nekhlyudov would have taken the current attitude toward the matter and turned away from her. The consciousness of his own guilt in regard to her might have moved him to transmit to her through the authorities a hundred roubles or two, but he would have done no more. As events shape themselves in the novel, Nekhlyudov's knowledge of his own guilt is strengthened by the realization of Maslova's innocence, and his desire of changing her fate becomes a moral necessity with him and revolutionizes his entire existence. In addition to that it must be remembered that Nekhlyudov, while pedantic and supercilious, was also a "dummy, a terrible dummy," according to the expression used by his aunt, the Countess Charskaya, when she heard of his intention to marry Maslova. The phrase seemed to characterize to her his mental and moral personality. Yet she added: "But I love you for being such a terrible dummy." This explains somewhat the unexpected and extravagant course of action determined upon

* "Journal of the Ministry of Justice," March, 1900, page 238. There are many instances of incongruous verdicts, resulting from a senseless piling up of words in the questions to the jury; for example, in a case where a peasant woman was accused of attempting to kill her husband by throwing poison in his milk, the jury, after lengthy deliberation, brought out the following verdict: "Guilty, but she did not give him the milk, and she deserves the clemency of the court."

by Nekhlyudov. The fact is that from his youth Nekhlyudov had been "one of those people for whom a sacrifice in the name of the mandates of morality is the highest mental satisfaction."

Had Nekhlyudov read of Maslova's conviction in the papers, had he recognized her description, and had he been fully convinced of her innocence, even that would not have been a sufficient stimulus, under the existing relations between men, for him to feel an irresistible desire to do for Maslova, in spite of the chasm separating them, all that he actually does for her in the novel. His determination to do a heroic act becomes natural only because, in addition to his initial guilt, Nekhlyudov finds himself responsible for Maslova's unjust conviction. The realism of the novel is heightened by its unusual beginning, when Nekhlyudov, guilty of having wrecked Maslova's whole life, becomes, on top of that, a participant in the cruel legal injustice of which she is the victim. Nekhlyudov expresses it this way: "It is impossible to abandon the woman I have loved and to be satisfied to pay the lawyer's fee and to save her from hard labor, which she does not deserve: to expiate my guilt with money, as I had thought then." * * *

It is essential to appreciate the fact that, by making a legal error the basis of his novel, Tolstoi does not intend to criticise merely our criminal procedure which makes it possible for innocent persons to be easily convicted. Such a conclusion would be just as erroneous as the contention that Tolstoi meant to represent the administrative methods as being better than the judicial, simply because in the novel Nekhlyudov, after having failed to alleviate Maslova's fate through the agency of courts, finally succeeded in doing so through a direct appeal to the administrative authorities. Tolstoi is not concerned with a legal error in the manner in which Voltaire was moved by the conviction of the innocent Callas, but by the moral error of the very existence of a criminal court. Tolstoi thinks that criminal trials sin not in methods of procedure, but in their fundamental principles. The very essence of a trial is, according to Tolstoi, the result of utter indifference of man to his neighbors and of his selfish desire to protect his sacred person and his property, no matter what outrage upon his neighbors that might involve. This is why one gains the impression from Tolstoi's description of a trial that all that is done in court professedly for the purpose of finding the motive of the defendant's past actions and of deciding his fate, really has no organic connection with the defendant's past

which has led him to his crime, nor with his future which depends on the verdict; the trial is one thing and the verdict another; no close relation exists between them.

Tolstoi is astounded when he finds that, after all, the modern court seeks to establish the same fact which the Inquisition attempted to ascertain through torture, namely, the bare fact of the defendant's participation in the crime. It was thought in former days that that could be established with the greatest degree of certainty through the defendant's own confession, and when other methods failed this must be secured by tortures. Now, it is believed that the trained mind of the judge is able to gather the truth from the evidence, circumstantial and oral, of the defendant's action and behavior, and the judge can now dispense with the confession. But the aim of the trial is, in the final analysis, the same as that of the Inquisition, namely, to prove that a certain evil deed has or has not been committed by the defendant. The difference is one of method and not of purpose. Tolstoi does not consider that the important question is whether or not the accused has committed an evil deed, but granted the deed, what were the reasons for the defendant's criminal inclinations, what is the real cause of the social disease of which the criminal is a symptom and a manifestation?

A proper culmination of the senseless structure known as criminal procedure, Tolstoi sees in the court of appeals. In that court the fate of the victim of the crime and of its perpetrator is not considered at all, for the judges occupy themselves with utterly purposeless mental gymnastics, and their ultimate decision is not even a result of these mental exercises but the consequence of certain considerations of policy, or of the chance mood of the judge. Consequently, the exact observance of the rules and regulations of this phase of legal procedure, which is embodied in a special institution, appears to him like a strange comedy which is the less justifiable because, after all, the fate of living human beings depends on its decisions. If the methods of procedure of a trial had really been conducive to the solution of the problem raised by the crime, it would have been reasonable to insist on a strict observance of all the rules; that would have been as important as the insistence on correct multiplication, factoring and extraction of roots in the solution of a problem in mathematics. But the verification of the methods of the trial, of the order of examination of the witnesses, the admission or rejection of documentary

evidence, etc., had no object, for nothing depended on these things; the decision of the court was not the answer to the problem presented by the case nor even the logical corollary which could be deduced from the evidence. Tolstoi cites Rablais' story of a jurist who was asked to straighten out a legal tangle and who, after looking over twenty pages of senseless legal talk, suggested that the litigants toss a penny: if heads turned up, judgment to go in favor of the plaintiff, if tails, in favor of the defendant. Maslova's trial was no better than that. The final verdict was not due to a consensus of opinion among the jurors, but to a series of circumstances: first, the presiding judge, who had taken a long time for his summing up, had forgotten to mention a point that he always explained, namely, that the jury might, in answering the question, say: "Yes, but without intent to kill;" secondly, because one of the jurors, the colonel, had been telling a long and tedious story about his wife's brother-in-law; thirdly, because Nekhlyudov had been so excited that he had not noticed that the proviso "without intent to kill" had been omitted and had thought that the phrase "without premeditation" annulled the verdict; fourthly, because another juror, Peter Gerasimovich, had left the room when the chairman read over the questions and answers; and, most important of all, because everybody had been tired and anxious to be released and therefore willing to agree to any decision which was likely to bring the matter to a conclusion.

The correctness of the answer to the question which Tolstoi expects a criminal trial to solve does not depend on legal technique which does not touch upon the vital matter at all. The abstract nature of the work of the appellate judges cannot but transform their activities into something that is very different from the artificial functions assigned to them. Tolstoi is firmly convinced that living men can work only when actuated by living motives. The senators in the consultation room are influenced in voting by real live considerations; the only trouble is that these considerations have nothing in common with the principles of appellate jurisdiction and still less with the problems of pronouncing judgment over a fellow being.

Nekhlyudov's feeling of painful depression is enhanced in the Senate by the contrast between the dry and empty nature of the work and the magnificence and the solemnity of the large surroundings; it is further enhanced by the presence of a number of exceedingly courteous and well-groomed attendants.

¶ Nekhlyudov begins to wonder vaguely what the significance of this tribunal may be when the self-confident Fanarin reads him the petition of appeal in Maslova's case. The proceedings in that case, as well as in the preceding case of libel in print, do not dispell his doubts and meditations.

Nekhlyudov listened and tried to understand the meaning of that which was going on before him, but, just as in the Circuit Court, the chief impediment to comprehension lay in the fact that they were not considering that which naturally seemed to be the main point, but a side issue.

Fanarin's speech which Nekhlyudov heard was not calculated to clarify the situation, or to explain it to Nekhlyudov.

The tone of Fanarin's short but strong speech was to the effect that he begged the Senate's indulgence for insisting on something which the Senators, in their sagacity and judicial wisdom, saw and understood better than he, saying that he did so only because his duty demanded it. After Fanarin's speech, there seemed to be not the least doubt but that the Senate would reverse the decision of the court.

Having finished his speech, Fanarin smiled a victorious smile.

Looking at his lawyer, and seeing his smile, Nekhlyudov was convinced that the case was won. But when he glanced at the Senators, he noticed that Fanarin was the only one who was smiling and triumphing. The Senators and the associate prosecuting attorney-general neither smiled nor triumphed, but had the aspect of people who felt ennui, and who were saying: "We have heard a lot of your kind of people, and that all leads to nothing."

Neither did Nekhlyudov's conscience derive much consolation from his talk with the associate prosecuting attorney-general, his former university colleague, who had read the decision in Maslova's case and who vainly tried to pacify Nekhlyudov by explaining to him the distinction between the merits of a case and the methods of procedure; he did not succeed in making Nekhlyudov understand why the correctness of the procedure took precedence over the erroneousness of the verdict.

"The question is not in the appeal, but in the woman, who is not guilty and yet condemned!"

Selenin heaved a sigh: "Very likely, but —"

"Not very likely, but absolutely —"

"How do you know?"

"Because I was one of the jury. I know where we made a mistake."

Selenin fell to musing. "You ought to have announced it then and there," he said.

"I did."

"You ought to have written it down in the protocol. If that had been in the appeal for annulment" —

"But it was manifest as it is that the verdict was senseless."

"The Senate has no right to say so. If the Senate should take the liberty of annulling the judgment of the courts on the basis of their own views of their justice, not only the Senate would lose every point of support and would be rather in danger of violating justice than establishing it," Selenin said, recalling the previous case, "but the verdicts of the juries would also lose their meaning."

"I know this much; the woman is absolutely innocent, and the last hope to save her from an unmerited punishment is gone. The highest court has confirmed a case of absolute illegality."

When Nekhlyudov heard his brother-in-law Ragozhinski, an orthodox mouthpiece of the authorities, refer to this everlasting matter of the merits of the case, he was greatly annoyed. No other effect could have been produced by the confident tone of his brother-in-law on Nekhlyudov who was seeking a remedy to the existing state of affairs rather than a reiteration of its principles. To quote again:

"The Senate has refused the appeal."

"If it has refused it, there could not have been sufficient cause for annulment," said Ignati Nikiforovich, apparently sharing the well-known opinion that truth is a product of a judicial verdict, "the Senate cannot enter into the merits of the case."

In days gone by, lawsuits were decided by means of duels between the litigants or even between hired combatants who were obliged to follow the strict rules devised for such conflicts. Tolstoi is reminded of this custom by the modern trial with its forms and ritual over which the Senate passes final judgment: the weapons have changed — but in Tolstoi's eyes the essence of the trial has remained the same. Does not the outcome of a case even now depend on the cleverness and artfulness of the contestants? The minds of judges in no way differ from the minds of other men. They have their own idiosyncrasies and can be influenced by the same facts either one way or the other. The outcome of a case thus depends on the chance mood or the state of mind of the judges, and the cleverness with which the sides appeal to their mental weaknesses and their prejudices. Thus, the assistant prosecuting attorney

delayed the case of the sectarians on account of the absence of an unimportant witness, who was not at all needed, and his reason for doing this was just

because the case was to be heard in a court where the jury were an intelligent set, and where it might easily end in their favor. By agreement with the presiding judge, this case was to be transferred to the session in a county seat, where there would be more peasants on the jury, and a better chance to end the case unfavorably for the sectarians.

During that same day in the civil department a case was being tried with the help of a famous lawyer, who managed to turn the case in such a manner that one of the sides, an old lady, was obliged to pay a large sum of money to the other side, although she was clearly in the right.

The judges knew that, and the plaintiff and his attorney knew it even better; but the case had been conducted in such a manner that there was no other issue possible but that the property should be taken away from the old woman, and given over to the pettifogger.

In the jury room one of the jurors, a venerable looking man, talked about the lawyer's genius with unfeigned enthusiasm. Even the court chaplain made the famous advocate's acquaintance with a feeling of especial respect. The question is, what relation has all this with the seeking of truth for which Nekhludov's soul was yearning?

Some of Tolstoi's critics from the ranks of the judiciary have taken him to task for depicting in his novel such ordinary persons, even granting that the judges described by him are real, rather than selecting more prominent characters. From Tolstoi's viewpoint that would of course have made no difference, since even an exceptional man on the bench is occupied only with himself and his private affairs while performing the superhuman and cruel task of administering criminal justice. But, one cannot help but inquire, who are the men who do the common every-day judicial work, the work which affects the people most: are they the exceptional or the ordinary judges? One need only attend a county session of the justices of the peace a single time and watch them perform their daily duties, to be converted from scepticism to belief in the truthfulness of Tolstoi's description of criminal trials. Tolstoi selected his trial and his judges from every-day occurrences. He did not wish to make Maslova's case a "cause celebre." If that were not so he would have filled the courtroom with a fashionable audience, like Dostoyevski, and would have introduced a famous counsel. Tolstoi, the portrayer of real life, took the court in its workaday appearance, the only manner in which a court is known to the masses of the people, and the manner

also, one is bound to admit, in which the essence of criminal justice is revealed more clearly, more directly and convincingly, without the ornamental and extraneous admixtures which invariably characterize a "cause celebre."

The truthfulness of Tolstoi's observations is further questioned by his critics on the ground that the important scene in the novel when Maslova looks indifferently at the jury and glances at Nekhlyudov, among the rest, without recognizing him, could not have occurred had Tolstoi known the code of criminal procedure which prescribes that a list of the jurors shall be handed to the defendants; Maslova, say the critics, must have seen the list and being literate, must have recognized her seducer's name, and must have been looking for him in the jury box. Such a criticism of Tolstoi is possible only to a judge, who not only knows the code, but is mentally saturated with its provisions. To such a judge it seems inconceivable, since such a provision exists, and the judge knows the reason for its existence and the possible evil consequences for a defendant who does not make use of it, that a defendant, upon receiving the list, should not devour its contents with his eyes and analyze consecutively all the names on the document. Such a judge is, of course, entirely unable to comprehend the attitude toward a piece of paper, be it indeed a legal document, which considers it only from the point of view of its usefulness for rolling cigarettes. As a matter of fact it is a common occurrence for defendants, both literate and illiterate, to use the paper stating the charge against them for a social smoke, omitting in their childish carelessness to cast so much as a cursory glance upon its contents. Such a judge, even if he knows about it, thinks: "So much the worse for them, it's their own fault if they do not choose to avail themselves of the guaranties granted them by our humane legislators." This reflection satisfies the judge. Not so the artist. His genius sees life and comprehends it as it is, and no sections of the code, no methods of procedure can conceal reality from him. He knows all the phases of life and even the daily official surroundings of the judges better than the judges themselves. One of the leading ideas of the "Resurrection" is that judges and other officials look at everything through the eyes of their vocation, and lose the ability to understand things in a natural manner. The horror of a criminal trial lies in the fact that it follows rules and precedents, and ignores the human life behind them. A criticism of Tolstoi from the point of view

of the technicalities of criminal procedure is the height of inappropriateness.

The critics are apt to say with scorn: "You speak of childish thoughtlessness! We wonder that the prisoners show it only in regard to others, and never to themselves?"

The following incident supplies an answer to this query. On the 8th of March, 1900, the case of the poisoning of a party of prisoners was tried in Kiev; eight of them had died. The poisoning was caused by a mistake: the prisoners in carrying some furniture out of a restaurant had taken rat poison for cheese and had lunched on it. The owner of the restaurant was tried for keeping poison carelessly, and was, of course, acquitted. But did the judges stop to think what lack of forethought was shown by these grown-up men at the sight of a supposed delicacy, and how unjust it had been to judge these men for their transgressions and to condemn them to hard labor? Could there be any doubt that these prisoners, when the list of their jurors was handed them, had never given it a thought and had used it for cigarettes?

The psychological reason why Maslova did not recognize Nekhlyudov when she met him in court is very plausibly explained in the novel:

She (Maslova) never thought of her childhood and youth, and especially of her love for Nekhlyudov. That was too painful. Those recollections lay somewhere deep and untouched in her soul. Even in her sleep had she never seen Nekhlyudov. She had not recognized him that morning at court, not so much because when she had seen him the last time he had been a military man, without a beard, with short moustache, and with short, thick, waving hair, whereas now he was a man of middle age, with a beard, as because she never thought of him. She had buried all her recollections of her past with him on that terrible, dark night, when he did not stop over at his aunt's upon his way from the army.

Neither was it surprising that Maslova did not hear Nekhlyudov's name when the presiding judge proclaimed it as he drew out the ticket from the urn; common people show utter indifference to all the proceedings of the court, unless directly addressed to them. Nor would the secretary's reading of the final panel have been noticed, since he usually mumbles these things to himself.

A proper understanding of Tolstoi is possible only to those who cast aside the current views of life and allow the mind to travel forward in time; forward or backward nineteen hundred years; Tolstoi cannot be understood by a philistine, who con-

siders his own ideas correct and impregnable, and admits the possibility of argument only about secondary details. Such critics, judges old and new, cannot reverse the verdict of the court in Maslova's case on account of the proceedings; they cannot do away with the slightest detail of the true and powerful picture of Maslova's conviction, which was not the result of good or bad legal practice, but of the indifference and self-love of man in his dealings with his neighbors.

Neither can Tolstoi be correctly understood by epicurean critics, who love literature and understand it only to the extent that it gratifies their aesthetic sense. In his "Resurrection," as well as in all his recent writings, Tolstoi does not permit his reader to be passively entertained. Quite on the contrary, he uses all his powers to poison the existence of the epicureans. To delight in his descriptions is highly inappropriate. They represent the truth of life which deprives the easy-going pleasure seeker of his peace of mind and his conviction that he is not to blame for the evils which surround him. According to Tolstoi, we are all participants in and accessory to the evils of society. The epicureans cannot tolerate this uncomfortable assertion. They are willing to read stories like Turguenyev's "Living Corpse," which delights them by the manner in which the author describes the sufferings of the ill-fated woman and her touching resignation. One can finish such a story, close the book and forget about it. One does not feel pledged to anything by the perusal. In reading Tolstoi now-a-days — one feels it one's duty to change something in one's environment and in one's self; especially in one's self. Our epicurean friends object to a book which does not stop at delighting their mental pallet — but imposes a burden on their conscience and forces them not only to meditate but to act in response to their emotions. Tolstoi's description of criminal tribunals places heavyweight upon the conscience of every man who lives in modern society, altogether irrespective of the question of his direct connection with the existing administration of justice and retribution.

Before John Howard's time, it was not considered proper in England to examine into the causes of deadly epidemics in prisons and other places of detention, because these diseases were interpreted as expressions of Divine wrath which was justly directed against the malefactors. What a change from this point of view to that of the modern methods of prison administration, with its perfected system of ventilation and its

enforcement of all the rules of hygiene conducive to the prevention of the evil effects of confinement! But Tolstoi naturally goes a great deal further in his appreciation of these effects. Nekhlyudov thinks that the death of prisoners from sunstroke, caused by their journey under the burning sun after a winter's confinement, is no better than deliberate murder. His sister, Natalya Ivanovna, exclaimed: "Why killed? Who killed them?" when he said: "Ah, what I have seen to-day! Two prisoners were killed!"

According to his conviction, the cause of this murder is not in men, but in the system. To cite Nekhlyudov:

"The most terrible thing of this all is that he has been killed, and nobody knows who it is that has killed him. There is no doubt about his having been killed. He was led, like all the prisoners, by order of Maslennikov. Maslennikov, no doubt, sent forth his habitual order, with his stupid flourish signed a paper with a printed heading, and, of course, in no way will regard himself as guilty. Still less can the prison doctor, who examined the prisoners, consider himself guilty. He accurately executed his duty, segregated the weak, and in no way could foresee this terrible heat, nor that they would be taken away so late and in such a throng. The superintendent? — but the superintendent only executed the order to send out on such and such a day so many enforced labor and deportation convicts, men and women. Nor can the officer of the guard be guilty, whose duty consisted in receiving a certain number of prisoners and delivering the same to such and such a place. He led the party according to the regulation, and he could not foresee that such strong men as those two whom Nekhlyudov had seen would not hold out and would die. Nobody is guilty — but the people have been killed, by these very men who are innocent of their deaths."

These men are quite indifferent to the death of prisoners. While looking at the severe but kind expression of the second dead prisoner in the police station, a man who was in the prime of life and remarkably handsome in face and form, Nekhlyudov thought:

"Let alone the fact that it was evident from his face what possibilities of spiritual life had been lost in this man, one could see, by the strong muscles of his well-proportioned limbs, what a handsome, strong, agile human animal he had been — in its way a much more perfect animal than that dung stallion, whose lameness so angered the fire captain. And yet, he died, and no one pitied him, neither as a man, nor even as an unfortunately ruined beast of burden. The only feeling which had been evoked in people by his death was the feeling of annoyance caused by the necessity of disposing of his rapidly decaying body."

Many defenders of the existing state of affairs will consider such incidents in the transportation of prisoners as an unavoidable evil, to be put up with for the sake of the entire system of

retribution. "What matter, indeed, is the death of one or two convicts? What is to be done?" — say the defenders. But Tolstoi sees in such incidents the proofs of the fact that even now prisoners are being dealt with in the primitive spirit of revenge. He contends that, while divided into several phases, the essence of the revenge which is now in the hands of authority and which formerly was in the hands of the injured parties has remained the same, only that the tortures have been spread out in space and time. Tolstoi has collected all the rays, which do not appear to ordinary man, and has given us a picture of modern revenge which from his moral standpoint does not differ from ancient bloody slaughter.

Torture inflicted with pincers is no longer practiced during the preliminary examination or at court. But men are still tortured by being deprived of their liberty and by the hardships of prison life when they undergo their punishment, and the essence of retribution is still seen in the painful sensations of the culprit. It would indeed be conceded by most that a system which reformed the criminal without causing him pain would be preferable to the modern one, and, if devised, should be adopted in its place. But such a system, say the critics, is impossible and is contrary to the very nature of the thing, and all efforts in that direction are as futile as the seeking by self-taught mechanics for eternal motion. But to Tolstoi this is no answer; with the realism with which we view the present, he conceives of an entirely new order of things. In this special field a man looking from the standpoint of the future back to the present can find plenty of examples of times when the radical changes later happily achieved seemed absolutely inconceivable. Let us look into the treaties by Judge Jeronimus Christoph Meckbach, published in June in the year 1756. This book contains scientific and practical explanations and directions to the administration of tortures. In paragraph five the author says with firm conviction that, while it is a pity to subject men to the tortures described in that section, and while a man who could invent a system of torture which would force criminals to confess without causing them pain would be worthy of a high reward, yet all this is a dream and a utopia equal to the discovery of a "perpetuum mobile," and judges must practice the existing system and observe that the pain inflicted to their victim be gradually increased as the milder forms prove to be ineffective.*

* Richard W. Wrede, *Die Körperstrafen bei allen Völkern von den ältesten Zeiten bis auf die Gegenwart*, pages 351-363.

Some readers saw in Tolstoi's work a caricature of the Russian courts in particular. But Tolstoi's view of modern criminal justice would have remained the same had he described an English or any other judge, or an American prison with its electric lights, its automatic fans, its newspapers, and other accessories of comfort. Other critics suspected Tolstoi of a prejudice against the bench, but Tolstoi is far from entertaining evil feelings toward any class of men. His entire moral figure, gigantic as it is, admits of no possibility of bias or ill will towards any part of the universe he describes. He considers all government officials in the same light as the judges, and believes that the exigencies of their official duties make them insensible to the mandates of humanity; Nekhlyudov compared them with the ground covered by a pavement. And in truth all the officials in the novel seem to have had veritable "paved souls." Like the ground covered by stone, they lose their natural qualities and are unable to show them even when they wish to.

"If all these people," thought Nekhlyudov, "Maslennikov, the superintendent the officer of the guard — were not governors, superintendents, and officers, they would have considered twenty times whether they ought to take out the prisoners in such a heat and in such large crowds; they would have stopped twenty times during the march, in order to take out such as were weakening and falling ill; they would have taken them into the shade, would have given them water to drink, would have allowed them to rest, and, if a misfortune had happened, would have expressed their compassion. They have not done it, and have even interfered with others who would have done it, because they saw before them, not men and their obligations to them, but their own service and its demands, which they placed higher than the demands of human relations."

The impression of a soul hardened by the demands of the service is gained from the assistant prosecuting attorney-general Selenin, and from Ragozhinski, Nekhlyudov's brother-in-law. The gradual development of Selenin's soul — a "clean soul" as his was called in social circles — under the influence of selfishness, concealed by various euphonious motives, is described in detail by the author. As regards the numerous members of the official world described in the novel, they occupy various stages in the official hierarchy and their souls are not paved alike. The members of the central government in St. Petersburg have souls paved with asphalt, smooth and even, but impenetrable, without the smallest aperture through which a living emotion could penetrate. Their attitude is voiced by the governor-general who refused

Nekhlyudov's request to leave Maria Pavlovna with the dying Kryltsov, even though she was willing to marry him for the purpose. During his conversation with the governor-general, Nekhlyudov confessed that he had had occasion to gain admittance to the political criminals through bribery. The General then said:

"I know that you must act like that. You want to see a political, and you are sorry for him. The superintendent or a guard will accept a bribe, because he gets about two dimes of salary, and he has a family, and cannot help accepting the bribe. I, in your place or in his, would act just like you or him. But in my own place, I do not permit myself to deviate from the strictest letter of the law, for the very reason that I am a man and might be moved by compassion. I am an executor. I have been trusted under certain conditions, and I must justify this trust."

One is tempted to ask this stalwart public servant what his thoughts about duty would be, if he had to refuse mercy to his own grandson and granddaughter — that fine pair of youngsters whom their mother had proudly shown to Nekhlyudov in their sleep — or whether it is consistent with the demands of duty to pity the boy who found no other place in the overcrowded transport station to rest his sleeping head except on a prisoner's knee in the midst of liquid flowing out of a refuse pail. The memory of this picture kept Nekhlyudov awake.

The lower officials have souls paved in a rougher manner; the pieces do not fit together perfectly, and real emotions can more easily penetrate through the openings.

This recalls the opening sentence of the novel:

No matter how people, congregating in one small spot to the number of several hundred thousand, tried to deform the earth on which they were jostling; how they paved the earth with stones, that nothing might grow upon it; how they weeded out every sprouting blade; how they smoked up the air with coal and naphtha; how they lopped the trees and expelled all animals and birds — spring was spring, even in the city.

An example of less self-control but of the greater responsiveness in the lower officials may be found in the memorable incident of the officer of the guard and the prisoner who was carrying in his arms the girl left him by his wife, who had fallen a victim to typhoid fever in Tomsk. The expression of unrestrained anger in that instance soon gave way to the demands of human sympathy.

The prisoner's remark that he could not carry his girl while handcuffed had excited the officer, who was out of sorts, whereupon he dealt blows to a prisoner, who did not submit at once.

In front of the beaten prisoner stood a soldier of the guard and a thickset, black-bearded prisoner with a handcuff on one hand, gloomingly looking up, now at the officer, and now at the beaten prisoner and the girl. The officer repeated his command to the soldier to take away the girl. Among the prisoners the murmuring became even more audible.

"He had no handcuffs on him all the way from Tomsk," was heard a hoarse voice in the back ranks. "It is not a pup, but a child."

"What is he to do with the child? This is against the law," said the somebody else.

"Who has said that?" the officer shouted, as though stung, rushing at the prisoner, "I will show you the law! Who said it? You? You?"

"All say it, because —" said a broad-shouldered, stocky man.

He did not finish his sentence. The officer began to strike his face with both his hands.

"You mean to riot? I will teach you how to riot! I will shoot you down like dogs, and the authorities will only thank me for it. Take the girl!"

The throng grew silent. A soldier tore away the desperately crying girl; another began to manacle the prisoner who submissively offered his hand.

"Take her to the women," the officer cried to the soldier, adjusting the sword hanger.

The little girl tried to free her hands from the kerchief and, with flushed face, whined without intermission. Marya Pavlovna stepped out from the crowd and walked over to the soldier.

"Mr. Officer, permit me to carry the girl!"

"Who are you?" asked the officer.

"I am a political."

Apparently, Marya Pavlovna's pretty face, with her beautiful, bulging eyes (he had noticed her before, when receiving the prisoners), had an effect upon the officer. He looked in silence at her, as though considering something.

"It makes no difference to me. Carry her, if you want to. It is easy enough for you to pity him; but who will be responsible, if he runs away?"

"How can he run away with the girl?" said Marya Pavlovna.

"I have no time to discuss with you. Take her, if you want to."

This officer became even more tractable later.

"Evidently, the officer was ashamed," shouted Marya Pavlovna, so that Nekhlyudov might hear her through the rumble of wheels.

"They have taken off Buzovkin's manacles. He is carrying the girl himself."

This incident serves as confirmation of Tolstoi's opinion of the soullessness of a penal system, which blindly does its work without noticing that it makes men do things to which their very natures are opposed. The separation of husbands and wives, of parents and children, are unavoidable incidents of the system, and are of such common occurrence that we often forget their cruelty. Not so Tolstoi: he reacts to all these things with the freshness of a man coming from another planet. Separations are the usual thing in the enforcement of legal penalties. The following incident illustrates what the modern

law may lead to. On the 15th of November, 1896, the Kiev court pronounced sentence on the Danilevski's, husband and wife. The husband was convicted of embezzlement and sent in exile to the government of Tomsk. His wife was an accessory and her penalty was two degrees below her husband's; she was sent to the government of Olonetsk. Had her penalty been as severe as her husband's, she would have been with him in his exile; the *leniency* of the court in administering the law led to a sentence which separated her from her husband. They will both be exiles to be sure, but there will be several thousands of miles between them. And this is a result of the court's leniency! Such a case is liable to make one entertain misgivings about the entire system which is capable of producing such results. When, in solving a problem in arithmetic, one obtains results contrary to the nature of things, such as fractional men or horses, one decides unhesitatingly that the method of solution is erroneous. Why not in a case like the above?

The incident just quoted, as well as all the other horrors of confinement and exile, are to Tolstoi inevitable results of the very existence of criminal retribution. *In his eyes punishment is the most flagrant of crimes.* A crime, not similar to those for which transgressors are tried, but a crime of human society itself. Tolstoi is firmly convinced of this, but in his all-forgiving soul he ascribes this crime of humanity to its blindness: the penal institutions are practicing cruelty over man, but no one is directly to blame for their operations.*

Novelists and dramatists have pictured to us the souls of individual criminals in such a manner as to make their depravity and cruelty appear fatal, so that their responsibility, in the sense of criminal retribution, is out of the question; such are the various types, different and yet alike in their common irresponsibility — Macbeth, Richard III, Franz Moor, Ras-kolnikov. Tolstoi has done the same thing in regard to the whole penal system with the distinction that no individual's blindness is brought out, but the blindness of the *collective soul of society*. Just as novelists and dramatists represent their heroes as the victims of their selfish instincts, neglecting all but their own selves, so Tolstoi pictures criminal justice in its inner essence as the sordid and soulless defense on the part

* This conclusion reached by Tolstoi, through his offended moral sense, is confirmed by the following opinion based on scientific observation. Professor von List, the greatest living authority on criminal law, says, after studying German criminal statistics, that "our penalties do not reform, intimidate or prevent crime, they do not keep a man from criminal activity; quite on the contrary, they usually strengthen criminal propensities." — (Journal of the Ministry of Justice, June, 1900, p. 287.)

of society, as a whole, of the selfish emotions of the individual. This social institution, which is supposedly intended to work for the common good and to guard common safety, is in reality the very apotheosis of egoism and brutality. This institution not merely creates selfishness, but also fosters it; it makes a recognized institution out of that brand of human sympathy which finds expression in revenge, a sympathy which hardens one against all fellow feeling for one's neighbor whose misfortunes, sufferings and ignorance are the causes of his criminality; a sympathy, indeed, fed exclusively by the selfish motive of guarding one's safety at whatever cost to one's fellow man.

Tolstoi, in seeking the salvation and regeneration of humanity, concentrates all the force of his intellect and his loving heart on this institution, the very existence of which renders impossible to his mind any normal relations of man to man. Criminal tribunals as a social institution are in a class by themselves; of all the judicial and administrative institutions, the criminal tribunal alone is directly concerned with the development of social instincts among citizens, that is, with the curbing of selfish impulses among them: the court says, do not kill, do not offer violence, do not rob a man of liberty, etc.; all other institutions approach the matter indirectly. And this institution, in the final analysis, makes a dogma of the very thing it pretends to combat. The penal system in its present form is not merely an unsuccessful attempt calling for reform, not one of the means to an end, but a suicidal institution, the very existence of which, according to Tolstoi's conviction, renders impossible a moral basis for social relations.

Tolstoi, as a reformer, does not propose, of course, to destroy the present system, but to enlighten humanity about its moral aberrations; without a conscious and a willing change toward sincere love and sympathy for one's neighbors, there is no salvation for society. Men must cease to judge one another, individually or socially. This does not mean that they must cease from analyzing each other's actions and motives. Quite on the contrary, analysis must become more universal and comprehensive, and in that sense men must judge and be judged more than ever, but men must judge, not in order to condemn, but to understand and help one another. The point is not to forgive, but fully to understand. A change must come not by way of a revolution, at least not a social nor a political revolution, but by way of a complete recasting of man's view of life, the enlightenment of his mind and the purification of

his heart of all ignorance and ill will. To accomplish that we must not remove ourselves from those whom we accuse of sin, not guard ourselves from them by means of prison walls, but we must approach them and enter into their midst with unfeigned sympathy in our hearts. The thoughts which came to Nekhlyudov's mind, after he had personally seen the prisoners on their way to Siberia, follow:

To know that somewhere far away one set of people torture another, subjecting them to all kinds of debauches, inhuman humiliations, and suffering, or for the period of three months continually to see that debauch and the torture practiced by one class of people on another, is quite a different thing. Nekhlyudov was experiencing this. During these three months he had asked himself more than once: "Am I insane because I see that which others do not see, or are those insane who produce that which I see?" But the people (and there were so many of them) produced that which so bewildered and terrified him with such quiet conviction that it must be so, and that that which they were doing was an important and useful work, that it was hard to pronounce all these people insane; nor could he pronounce himself insane; because he was conscious of the clearness of his thoughts. Consequently he was in continuous doubt.

What Nekhlyudov had seen during these three months presented itself to him in this form: from all people who are living at large, by means of the courts and the administration, are selected the most nervous, ardent, excitable, gifted, and strong individuals, who are less cunning and cautious than the rest, and these people, not more guilty or more dangerous to society than those who are at liberty, are locked up in prisons, halting places, and mines, where they are kept for months and years in complete idleness and material security, and removed from Nature, family, and labour, that is, they are forced outside all the conditions of a natural and moral human existence. So much in the first place. In the second place, these people are, in these establishments, subjected to all kinds of unnecessary humiliation — to chains, shaven heads, and disgracing attire, that is, they are deprived of what is, for weak people, the chief motor of a good life — of the care of human opinion, of shame, of the consciousness of human dignity. In the third place, being continually subject to all the perils of life — not to mention the exceptional cases of sunstroke, drowning, fires, of the ever-present contagious diseases in the places of confinement, of exhaustion, and of beatings — these people are all the time in that condition, when the best and most moral man, from a feeling of self-preservation, commits and condones the most terrible and cruel acts. In the fourth place, these people are forced to have exclusive intercourse with dissolute people who have been corrupted by life, and especially by these very institutions — with murderers and villains, who, as a leaven on the dough, act on all others who have not yet been completely corrupted by the means employed against them. And, at last, in the fifth place, all the people who are subjected to these influences are, in the most persuasive manner, encouraged, by means of all kinds of inhuman acts committed in regard to themselves — by means of the torture of children, women, and old men, of beating and flogging with rods and straps, of offering rewards to those who will give up alive or dead a fugitive, of separating men from their wives and connecting for cohabitation strange

men with strange women, of shooting and hanging — they are encouraged in the most persuasive manner to believe that all kinds of violence, cruelty, bestiality, are not only not forbidden but even permitted by the government when it derives any advantage from them, and that therefore they are especially permissible to those who are under duress, in misery and want.

All these institutions seemed to him to have been specially invented in order to produce the compactest possible debauch and vice, such as could not be attained under any other conditions, with the further purpose in view later to disseminate the compact debauch and vices in their broadest extent among the people. "It looks as though a problem had been put how to corrupt the largest possible number in the best and surest manner," thought Nekhlyudov, as he tried to get at the essence of jails and prisons. Hundreds of thousands of people were every year brought to the highest degree of corruption, and when they were thus completely debauched they were let loose to carry the corruption, which they had acquired in confinement, among the masses.

Nekhlyudov saw how this aim, which society had in view, was successfully reached in the prisons of Tyumen, Ekaterinburg, and Tomsk, and at the halting places. People, simple, common people, brought up in the tenets of Russian social, Christian, peasant morality, abandoned these conceptions and acquired new prison ideas, which consisted mainly in the conviction that every outrage and violation of the human personality, every destruction of the same, was permissible whenever it was advantageous. People, who had lived in the prisons, with all their being came to see that, to judge from what was being done to them, all the moral laws of respect and compassion for man, which had been preached by religious and moral teachers, were, in reality, removed, and that, therefore, there was no need for holding on to them. Nekhlyudov saw this process in all the prisoners whom he knew: in Fedorov, in Makar, and even in Taras, who, having passed two months with the convicts, impressed Nekhlyudov by the immorality of his judgments. On his way, Nekhlyudov learned that vagabonds who run away to the Tayga persuade their comrades to run with them, and then kill them and feed on their flesh. He saw a living man who was accused of it, and who acknowledged this to be true. Most terrible was the fact that these were not isolated cases, but of common occurrence.

Only by a special cultivation of vice, such as is carried on in these institutions, could a Russian be brought to that condition to which the vagabonds are brought.

"Why then, do they do all these things?" Nekhlyudov asked himself, and found no answer.

What surprised him most was that all this was not done at haphazard, by mistake, incidentally, but continuously, in the course of centuries, with this distinction only, that in former days they had their noses slit and their ears cut off, then, later, they were branded and beaten with rods, and now they were manacled and transported by steam, instead of carts.

The reflection that that which provoked him originated, as those serving in these institutions told him, in the imperfection of the arrangements at the places of confinement and deportation, and that all this could be remedied, did not satisfy Nekhlyudov, because he felt that that which provoked him had nothing to do with the more or less perfect arrangements of places of confinement. He had read about perfected prisons with electric bells, of electrocutions, recommended by Tarde, and this perfected violence offended him only more.

Having become closely acquainted with the prisons and halting places, Nekhlyudov noticed that all the vices which developed among the prisoners, drunkenness, gambling, cruelty, and all those terrible crimes which are committed by the inmates of the prisons and even cannibalism itself, are not accidents or phenomena of degeneration, criminalism, and cretinism, as dull savants explain it, playing into the hands of the government, but the inevitable result of the incredible error that people may punish others. Nekhlyudov saw that cannibalism did not begin in the Tayga, but in the ministeries, committees, and departments, and was only accomplished in the Tayga.

Tolstoi's idea of the necessary changes in human motives and emotions can be materialized only through an entire regeneration. The spiritual qualities of sympathy and unselfishness must win the battle over bodily interests which generate ill will and revengefulness. This is the real "Resurrection."

The scene with the pigeon in the beginning of the novel, when Maslova is being led from the prison to court through the streets of Moscow, may be regarded as a symbolic anticipation of her future destiny:

As she passed near a flour shop, in front of which pigeons waddled, unmolested by anybody, she almost stepped on one: the pigeon fluttered up, and flapping its wings, flew past the prisoner's ear, fanning the air against her. She smiled, and drew a deep sigh, as she recalled her situation.

Between Tolstoi and John Howard, the prison reformer of the last century, there exists an interesting similarity. Being a Puritan, Howard could not tolerate the desecration of the Christian faith, which in his eyes was practiced in Italy through the church ritual and its accessories. During the last years of his life, he used vegetable food exclusively and refrained from the use of spirituous liquors. He was opposed to any exact science, such as geology, thinking that it led man away from true Christian morality. The following incident is recorded in Howard's biography and emphasizes the comparison with Tolstoi. He was a Puritan, and, like his forefathers, had made a solemn covenant with the Deity. He renewed that covenant and signed it for the last time in the year 1789 *in the city of Moscow*. That is why the countess Charski meets Nekhlyudov with the smiling remark: "Vous posez pour un Howard."

Howard's main work, "The State of Prisons in England and Wales," is characterized by Spassovich in the following manner :

This work is very remarkable in its way; one of the most important productions of the XVIIIth century, it was written by an author who was neither

a scholar nor a man of letters. Never before had a descriptive book, full of statistics, as objective as an account book, and avoiding all expression of personal feeling, had a like success in England, and not with specialists, but with the general public. The book deserved its success by its unusual simplicity, in which the truthfulness of the author is apparent.

And further:

Howard's example is valuable because it demonstrates what may sometimes be accomplished by a private individual, who holds no office and has no authority, but who of his own free will labors unceasingly for the common welfare.

This work of Howard's, as well as all his other writings, had a great significance and a powerful influence on prison methods. But evidently his grasp of the situation,* his method of study and of exposition were not sufficient to exhaust his subject, and a hundred years later it is still possible to find in a civilized land such methods of handling criminals as are described by Tolstoi. In this respect the novelist has a great advantage; the abundance of personal feeling makes every reader live through all the events of the novel, and is much more forceful and convincing than a scientific treatise, especially when the author is possessed of a pure soul, full of sincerity and of truthfulness. An artist alone could succeed in making us love the man who wears stripes.

Many authors have discussed and are now writing about the futility and the cruelty of punishment. Tolstoi has thrown new light on the matter by connecting the futility and cruelty with the very essence of the criminal tribunal. Old observations have, in this manner, gained a new significance.

Tolstoi's thoughts in regard to criminal trials seem strange to us because we consider them as the outgrowth of society's struggle with the criminal, and a struggle that can be no different. But to Tolstoi an accepted viewpoint is no dogma; he thinks and what is more he feels wholly without respect to the established order whenever it deviates from the precepts of universal kindness.

Every conception or dream of a different manner of handling criminals is met by the argument that the desire for revenge is so ingrained in man that he insists on seeing his offender punished, and that this insistence on criminal retribution is one of the bulwarks on which the entire social structure rests.

* "Never," says Spassovich in this connection, "did he ask himself the momentous question of the logical foundation of the right to punish. Punishment in his eyes needed no justification, it was an integral part of the divinely ordained order of things."

To Tolstoi this bulwark is not essential, and the demand of torture for the offender is not a fundamental trait of man. His negative attitude toward these matters is perhaps justified by the following anthropological observation:

A certain Krantz, an investigator who spent a long time with the Samoyeds of Greenland in the last century, tells us that at that time all quarrels were decided among those people through a song and dance known as the song conflict. When a Greenlander is offended, he manifests no signs of anger and does not seek revenge; instead he occupies himself by the composition of a satire on his offender; he repeats his song with appropriate gestures before his associates who all master its details. Then he publicly challenges his opponent to a conflict, not of swords, but of songs, and the opponent appears in the arena, which is surrounded by the public. Then the offended combatant sings his satire to the accompaniment of a drum, and all his friends join in the chorus; he tells his opponent in a witty form many bitter truths to the delight of the watching populace. When he is through the offender answers the attack with his song; he defends himself and ridicules his opponent; his friends laugh at his jokes and join in the chorus. The first man replies again, and so this conflict lasts until one or the other of the combatants finds himself unable to compose any longer. The victor is congratulated and crowned with laurels and the opponents become friends once more. Nansen recently confirmed the existence of this custom in Greenland and expressed regret that it had been abolished in the Western part of the island through the interference of Catholic missionaries. Such a method of settling disputes seems to us to be incredible, and possible only to the abnormal men who live surrounded by the snow and ice of the polar region. The same method of conflicts in song, however, has been found among the ancient inhabitants of Arabia who live in close proximity to the tropics.*

All this leads us to the conclusion that no final decision can be reached about the potentialities of human nature on the basis of the feelings of our contemporaries alone. In the realm of criminal retribution, generalizations, based on modern conditions, are the less justifiable because the history of criminal law establishes the fact that bloody revenge was invariably followed by a period when the feelings of an offended party and his clan, as well as the demands of the authorities, were

* S. R. Steinmetz, "Ethnologische Studien zur ersten Entwicklung der Strafe," v. II, p. 69-76.

satisfied with a payment of a fine for the offense without the infliction of any pain on the offender; a regular tax existed for various crimes and the payment of the tax took the place of bloody vengeance in criminal trials.

Often a negative attitude toward criminal punishments is met by the query: What shall be put in their place? From Tolstoi's viewpoint this reply merits no consideration. If some one discovered that quinine, for instance, not only did not counteract a specific disease of the organism but made it worse, could there be found a man who would insist on the continuation of the use of quinine against fever until a new remedy be discovered? And, finally, we must keep in mind that Tolstoi is not examining so much into the conditions which may lead a man to kill his neighbor, as into the unnaturalness of the state of affairs which forces one man to say to another about his neighbor: "Here, put him away, destroy him!" and yet, figuratively speaking, every criminal sentence does just that, and a death sentence does it literally.

Taking all this into consideration, and trusting to Tolstoi's instinct as to what is and what is not an attribute of healthy human nature, one is constrained to admit that, with his sermon in defense of those undergoing punishment, he has brought about a real revolution in the question of retribution. He has accomplished more with his novel than the most enlightened courses of philanthropy, or the most crowded meetings of prison associations; he has made it clear that those who undertake to reform others are themselves in greatest need of reform.

Every one admits now that the evil will of the criminal is not the sole cause of crime, as was formerly believed, and that to reform a criminal it is not sufficient to cause him pain; the new conceptions of responsibility are reflected in the improved up-to-date reformatories. Tolstoi has approached the subject from a different side; he has made us feel that the cause of the evil is not where it is looked for, and that the futility of the struggle with crime is due to the wrong direction of thought. That which we have been accustomed to canvass in two dimensions, has been proved to be possessed of three. Punishment which follows crime, not in the natural order of things but according to the sinful foundations of modern society, calls for an executor. And thus the judge who pronounces the verdict, the policeman who guards the defendant, the jailer who keeps him under lock and key, and the executioner who kills him, all of them collectively become this executor, in spite of the fact that

they attempt to placate their conscience each by placing the blame on the other. This is the new dimension discovered by Tolstoi in the problem of crime and punishment. The momentous question is not the success or failure of various kinds of penalties, but the moral effect of punishment on those who pronounce the verdict and those who carry it out.* Those who punish must reform themselves before punishing others; they must send their own consciences into reformatories; they must, like Nekhlyudov, "cleanse their souls" before taking upon themselves the right to subject others to privations for purposes of reformation. This attitude is diametrically opposed to that manifested by the presiding judge in Maslova's case, who, before the trial, exercises in his chamber with dumb-bells, and stopping before the last antic known as "mouliner," and testing the muscle of his right arm with his left, exclaims with perfect self-satisfaction, "Nothing keeps up a man's physique as water and gymnastic exercises."

History is not made by the intellect, but by emotions. Tolstoi's crusade against criminal repression is strong, not in arguments proving that it has never achieved and does not now succeed in the destruction of crime, but in the feeling of sympathy it arouses toward the victims of repression; punishment is not the outcome of a deep and sane view of life but an undignified and morally infantile manner of handling one's neighbor's liberty, health, and existence. Tolstoi attacks criminal retribution in the manner in which an opponent of chess would plead against the game; he would not merely prove that the feigned seriousness of the game, which indeed requires patience, skill, concentration and ability, is not justified by the insignificance of the results, but he would clothe with flesh and blood all the pawns and other pieces on the board and would demonstrate how they suffer at the hands of the players, how they struggle and fall, when they are persecuted according to the rules of the game, and are then thrown off the board. Tolstoi not only proves that no matter how often the courts cry "check" to crime, they can never succeed in "mating" it; but, by lending life to the emotions of all the participants in the trial, he makes us feel deeply that the sufferings purposely imposed by law are contrary to the mandates of the heart as well as of the intellect.

To educate human emotions, to lend them new substance and direction, is the highest vocation. In this respect the influence

* Let us remember here, that in Russia there are about 11,000 prison inspectors and assistants alone.

of the "Resurrection" is immense and incalculable. It is enough to say that under the influence of the novel no man will be able to see, without moral pain, a passing transport of prisoners with their chains, their handcuffs and other sad appurtenances. That feeling which was experienced by the boy in the elegant carriage, when it was stopped by the passage of the transport through the streets of Moscow, will become universal — the boy's lips "swelled more and more" under the fearful impression of what he saw, as is vividly described in the novel. But this feeling will become universal, without the embarrassment which forced the boy to make violent efforts to keep from crying, because he thought "that it was a shame to cry on such occasions."

The sight of prisoners always aroused an uneasiness in onlookers which was for the most part caused by curiosity, but now the spectator will shut his eyes before this sight as though he felt himself responsible for its horrors. All men will feel the moral sickness bordering on physical, which was experienced by Nekhlyudov in prison, in the transport station, and on all such occasions. This in itself is a great reform; the shape which these new feelings will take in life are secondary considerations. What exists must do so no longer; what will take its place is another question.*

The chief value of Tolstoi's book is in the kind feelings it evokes in men. The part which the "Resurrection" will play in combating criminal slavery will no doubt be similar to that played by Harriet Beecher Stowe's novel in the abolition of negro slavery. Tolstoi's task is a heavier one; he attacks an institution which is everywhere considered normal and necessary, whereas Mrs. Stowe was indignant at a practice which was condemned as a disgrace by the entire civilized world. The peculiarities of Tolstoi's view of life, his mistakes and aberrations — even granting their existence — do not detract one whit off the moral significance of his work. His new work has proved once more that he has no equal in the ability to evoke sympathy, love, and humane aspirations in the heart of man; in reading him alone, one becomes kinder and kinder with every line he reads.

At the end of the novel is the inscription: "Moscow, December 12th, 1899." One can hardly deny that, in the manner

* There are at present strictly scientific works, based on abstract theories, which take a negative attitude toward the existing penal system; such is the fundamental two-volume study by Professor Vargha: "Zur Abschaffung der Strafknechtschaft," which demands the immediate abolition of punishment and proposes in its stead a specially organized system of guardianship.

suggested here, this work of Tolstoi's, which Russia may proudly call her own, and which appeared at the very close of the last century, is one of the most remarkable, if not the most remarkable, book of the XIXth century.

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